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

FIFTH SECTION

DECISION

Application no. 32100/21
Viktor Volodymyrovych MEDVEDCHUK
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 2 June 2022 as a Committee composed of:

Ivana Jelić, *President,*
Ganna Yudkivska,
Arnfinn Bårdsen, *judges,*

and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 11 June 2021,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Viktor Volodymyrovych Medvedchuk, is a Ukrainian national who was born in 1954 and lives in Kyiv. He was represented before the Court by Ms L. Cherednichenko, a lawyer practising in Kyiv.

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

A. Background information

3. The applicant is a member of parliament and one of the leaders of the political party Opposition Platform – For Life. In that connection, he submitted that his political party was "one of the most avid critics of Ukraine's President and his political power" and that he was being subjected to "total persecution" by the authorities. He alleged that targeted media campaigns had been launched against his party, television broadcasting companies disseminating alternative views to those of the authorities had been shut down, there had been physical attacks on party members or those associated with it and their communications had been intercepted. In support

of those allegations, he referred mainly to various media reports and publications on the Internet, in one of which Ukraine's current President was quoted as saying in July 2020 that "[the applicant] is being financed [by] the Russian Federation".

4. On 19 February 2021 the National Security and Defence Council of Ukraine imposed economic sanctions on the applicant and seven other individuals pursuant to the Law on Sanctions of 14 August 2014, which included blocking of all assets, banning commercial transactions, annulling licences and permits for business activities and banning transfers of money abroad for three years. It was reported in the press that the said sanctions were imposed in connection with the suspicion that through their businesses the applicant and several other individuals had financed "terrorist organisations" in the east of Ukraine amid the Russian aggression against it.

B. Criminal proceedings against the applicant

5. On 11 March 2021 criminal proceedings were initiated against the applicant on suspicion of high treason and stealing and/or misappropriation of Ukraine's property on territory occupied by another State (Articles 111 and 438 of the Criminal Code respectively). In particular, he was charged with (i) collecting information regarding Ukraine's armed forces and transferring it to the Russian Federation (more specifically, the investigators alleged that on 1 August 2020 the applicant had sent an electronic message with information regarding the location, composition and operational plans of a special intelligence unit of the Ministry of Defence to his counterpart, who had been in Russia at that time and had been systematically transferring this kind of information to the Russian authorities); (ii) organising events through an association under his control, and media campaigns aimed at "destabilising Ukraine's social and political situation"; and (iii) registering a company in Russia which was given official permission to explore oil and gas resources in Crimea following the annexation of that territory by the Russian Federation. According to the material in the case file, the suspicions were based on, *inter alia*, various official documents of the Russian authorities and the applicant's communications which had been intercepted by the Ukrainian authorities.

6. On 11 May 2021 the applicant was officially notified of those suspicions.

7. On 13 May 2021 the Pecherskyi District Court ordered his house arrest for twenty-four hours a day until 9 July 2021. On 21 May 2021 the Kyiv Court of Appeal dismissed an appeal by the applicant against that decision and upheld the preventive measure. The courts held that, by using his parliamentary status and public profile, the applicant might exert undue influence upon the investigation, witnesses, fellow suspects and other persons involved. The courts also held that he could conceal or destroy evidence not

yet collected by the investigators and communicate with others involved in the suspected criminal activities to that end. Those risks could not be effectively avoided by applying any less restrictive measures provided for by domestic law. The courts also rejected an offer of personal surety made by several members of parliament, since they belonged to the same political party and could not guarantee his appearance at trial or his "appropriate procedural behaviour". In addition, the courts dismissed various procedural complaints lodged by the applicant, finding that the relevant investigations had been conducted lawfully.

8. On 7 July 2021 the Pecherskyi District Court allowed the investigator's application for the extension of the time-limit for the completion of the investigation until 11 November 2021. Allegedly, the applicant and his lawyers were not timely informed of the hearing of 7 July 2021 and thus could not take part therein.

9. On 9 July 2021 the Pecherskyi District Court extended, on essentially similar grounds as in its decision of 13 May 2021 (see paragraph 7 above), the applicant's twenty-four-hour house arrest until 9 September 2021. On 30 July 2021 the Kyiv Court of Appeal upheld that decision. The applicant and his lawyers took part in the court hearings of 9 and 30 July 2021.

10. According to media reports, on 12 April 2022 the applicant was arrested by the Ukrainian Security Service on the basis of a court decision adopted in March 2022 in the framework of a different set of criminal proceedings against him.

COMPLAINTS

11. Relying on Article 5 of the Convention, the applicant complained of the absence of "reasonable suspicion" in connection with his house arrest, arguing that the suspicion had been based on vague provisions of the Criminal Code and on evidence collected in breach of the relevant procedural rules by bodies not authorised to do so. Nor had that measure been based on relevant and sufficient reasons. He alleged that no other less intrusive preventive measures had been duly examined.

12. Relying on Article 6 of the Convention, the applicant complained that he had been informed of the suspicion against him in a manner contrary to procedure (by post rather than in person); that the courts, dealing with his case had not been impartial and had not properly assessed his arguments against the application of the preventive measure in question; that their decisions had not been duly justified; that the Pecherskyi District Court had no jurisdiction to decide on the case; and that it had examined the investigator's application for the extension of the time-limit for the completion of the investigation on 7 July 2021 in the applicant's and his lawyers' absence (see paragraph 8 above).

13. Relying on Article 18 of the Convention taken in conjunction with Articles 5 and 6, he complained that the preventive measure which had been applied to him had been ordered for ulterior motives, in particular to "remove him, as a member of parliament [belonging] to the opposition, from Ukraine's political and social life".

THE LAW

14. The Court notes at the outset that the criminal proceedings against the applicant are still in a very preliminary stage. Therefore, in so far as the applicant may be understood as complaining of violations of his right to a fair trial under Article 6 §§ 1 and/or 3 of the Convention, those complaints are premature.

15. As regards the complaints falling to be examined under Article 5 of the Convention, it is to be noted that the applicant, who was informed of the suspicion and of the grounds on which the investigators sought the imposition of a preventive measure in his case and who was legally represented throughout the proceedings, raised most of his complaints in the present case (except those of his alleged "persecution" and the alleged ulterior motives behind his prosecution) before the courts at two levels of jurisdiction. The Court notes that the chosen preventive measure was house arrest and that the response given by the courts to those complaints and the reasons on which the relevant decisions were based do not appear to be arbitrary or unreasonable. On the whole, their assessment of the question of the application of house arrest in the applicant's case, which is to be seen as constituting deprivation of liberty within the meaning of Article 5 (see *Korban v. Ukraine*, no. 26744/16, § 139, 4 July 2019), was in line with the relevant substantive and procedural guarantees of that provision (see, among other authorities, *Shmorgunov and Others v. Ukraine*, nos. 15367/14 and 13 others, §§ 459-61, 21 January 2021).

16. In particular, references to various pieces of evidence in the material submitted to the Court demonstrate that the suspicion that the applicant might have committed high treason (by transferring military secrets to another State) was based on sufficient objective elements for it to be seen as "reasonable" within the meaning of Article 5 § 1 (c). At this stage, it is not decisive whether this evidence will lead to a conviction or even the bringing of official charges (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 184, 28 November 2017). Nor is it necessary to examine whether there was also a reasonable suspicion in respect of the other two charges (organising events aimed at destabilising Ukraine's social and political situation, and registering a company in Russia which was given authorisation to explore gas and oil in Crimea).

17. Also, it was not objectively unreasonable for the courts to perceive, at this initial stage of the proceedings, a risk that, if allowed to remain at liberty,

the applicant might try to conceal or destroy any potential evidence which the investigators had not yet obtained in respect of the suspicion in question, or to put pressure on potential witnesses or co-suspects to do so. Moreover, the very nature of the suspicion against the applicant presupposed a high level of connections abroad, and supported, accordingly, a conclusion that there was a risk of escape.

18. Furthermore, the applicant's argument against the courts' interpretation of the relevant procedural rules is unpersuasive and, in any event, the alleged procedural shortcomings in the conduct of the investigations were not of such a kind or such seriousness to prevent their further pursuit or his prosecution in relation to the suspected criminal activity.

19. Thus, the applicant's house arrest was based on a "reasonable suspicion" and was justified by a risk of prejudice to the administration of justice in line with Article 5 of the Convention.

20. Moreover, contrary to his arguments under Article 6 (which are to be examined from the standpoint of the procedural guarantees of Article 5 §§ 2 and/or 3 of the Convention), the question of the application of the house arrest was decided in a fair manner with due regard to the applicant's procedural rights. The applicant had the opportunity to put forward his arguments against the application of that measure as well as his arguments regarding the alleged procedural shortcomings in the domestic proceedings, which were duly examined and answered by the courts of two judicial instances. There are no reasons for the Court to consider that the courts decided arbitrarily or to doubt their impartiality.

21. Although Ukraine's high governmental officials made public statements that the applicant and some of his political allies had assisted the Russian authorities in their aggression against Ukraine and the National Security and Defence Council of Ukraine imposed economic sanctions on them in that connection (see paragraphs 3-4 above), which are not the subject of the present application, there is no evidence that the applicant's house arrest was tainted by arbitrariness or formed part of a strategy of the authorities to hinder his political activities or "to remove him from social life" (contrast *Shmorgunov and Others*, cited above, §§ 464-77).

22. In the light of the foregoing, the Court rejects the applicant's complaints as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 15 September 2022.

Martina Keller Deputy Registrar	Ivana Jelić President