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

FIFTH SECTION

DECISION

Application no. 15058/14
Yevgen Mykhaylovych PEDENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 24 February 2022 as a Committee composed of:

Mārtiņš Mits, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 15058/14) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 31 December 2013 by a Ukrainian national, Mr Yevgen Mykhaylovych Pedenko, who was born in 1976 and lives in Kyiv ("the applicant");

the decision to give notice of the complaint concerning the lawfulness of the applicant's detention to the Ukrainian Government ("the Government"), represented by their Agent, Mr I. Lishchyna of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The case concerns the alleged unlawfulness of a court decision given in breach of the rules of territorial jurisdiction ordering the applicant's pre-trial detention, in breach of Article 5 § 1 of the Convention.

2. On 22 February 2013 criminal proceedings were instituted against the applicant on suspicion of bribing a judge. An investigation into the above-mentioned charge was carried out by the Kyiv City Prosecutor's Office, which was registered in the Pecherskyi District of Kyiv and which formally notified the applicant of the investigation on 1 August 2013.

On 29 August 2013 the Golosiyivskyi District Court of Kyiv ("the Golosiyivskyi Court"), on an application lodged by an investigating officer of the Kyiv City Prosecutor's Office, ordered the applicant's pre-trial detention. The applicant's lawyer appealed against that decision, stating, *inter alia*, that the Golosiyivskyi Court had no territorial jurisdiction to decide on the applicant's detention within the context of the investigation, which had been carried out in the Pecherskyi District of Kyiv, and that the Pecherskyi District Court of Kyiv was therefore the competent court to decide on the applicant's detention. On 17 September 2013 the Kyiv City Court of Appeal upheld the decision of 29 August 2013, finding that no procedural violation had been committed by the local court.

THE COURT'S ASSESSMENT

3. In support of his complaint that his detention had been unlawful, which was raised under Article 6 § 1 but falls to be examined under Article 5 of the Convention, the applicant referred to the provisions of Article 184 of the 2012 Code of Criminal Procedure of Ukraine, which provides that an application by an investigating officer for a preventive measure is to be lodged with the court which has jurisdiction over the territory in which the pre-trial investigation was conducted.

4. The Government contested the applicant's submissions, arguing that the investigative unit of the Kyiv City Prosecutor's Office dealing with the applicant's case had in fact been located in the Golosiyivskyi District of Kyiv. They further stated that the decision given by the Golosiyivskyi Court had been reviewed on appeal and no procedural violation had been established. Even assuming that there had been an error in defining the competent court, that error could not have been so serious as to constitute a breach of Article 5.

5. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and enshrine the obligation to conform to the substantive and procedural rules thereof. Although it is in the first place for the national authorities (notably the courts) to interpret and apply domestic law, under Article 5 § 1 a failure to comply with domestic law entails a breach of the Convention, and the Court can and should review whether this law has been complied with (see, among many other authorities, *Assanidze v. Georgia* [GC], no. 71503/01, § 171, ECHR 2004-II). For an assessment of compliance with Article 5 § 1 of the Convention, a basic distinction has to be made between ex facie invalid detention orders – for example, an order given by a court in excess of jurisdiction, or where the interested party did not have proper notice of the hearing – and detention orders which are prima facie valid and effective unless and until they have been overturned by a higher court. A detention order must be considered as ex facie invalid if the flaw in

the order amounted to a "gross and obvious irregularity" in the exceptional sense indicated by the Court's case-law (see *Mooren v. Germany* [GC], no. 11364/03, § 75, 9 July 2009, with further references).

6. The Court takes into account the fact that the decision given by the Golosiyivskyi Court on 29 August 2013 was upheld on appeal; it also observes that that decision was given in accordance with the standard procedure provided for by domestic law and that the applicant did not question the relevance of that procedure to his case.

7. Even assuming the existence of procedural flaws in the Golosiyivskyi Court's decision to order the detention of the applicant, the Court, having regard to the parties' submissions and the considerations mentioned above, finds that those flaws were of a formal nature and that they did not in any way affect the lawfulness of the detention order on the substance.

8. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the above complaint does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that the application must be rejected in accordance with Article 35 § 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	Mārtiņš Mits President