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**La Corte Edu sull'arresto di un cittadino accusato di reati legati al terrorismo (CEDU, sez. V, sent. 17 settembre 2020, ric. n. 58444/15)**

Con la decisione in esame, la Corte EDU si è pronunciata sul ricorso presentato contro l'Ucraina dal signor Grubnyk il quale ha denunciato, sotto molteplici aspetti, la violazione degli artt. 5 e 6 della CEDU.

Nel caso di specie, il ricorrente era stato accusato dalle autorità ucraine di aver pianificato l'attentato terroristico verificatosi nel settembre del 2015 nella città di Odessa e, per tale ragione, arrestato dagli agenti di polizia nella giornata del 19 ottobre 2015. Il giorno successivo, inoltre, il tribunale distrettuale di Odessa Prymorsky ordinava la custodia cautelare del ricorrente. Quest'ultimo, tuttavia, faceva appello alla Corte d'Appello Regionale di Odessa sostenendo, in particolare, che si fosse registrato un ritardo nella stesura del verbale di arresto, redatto soltanto il giorno successivo, con conseguente negazione delle garanzie procedurali; che non fossero state tempestivamente illustrate le ragioni del suo arresto; che il fermo, benché non avvenuto nell'immediatezza del fatto di reato, fosse stato ordinato in mancanza di una previa decisione del tribunale; che le prove presentate dall'investigatore fossero insufficienti a sostenere un ragionevole sospetto nei suoi confronti; che il tribunale distrettuale non avesse tenuto in debito conto la possibilità di ricorrere ad una misura preventiva non detentiva; che, da ultimo, la dichiarazione contenuta nell'ordinanza di detenzione, secondo cui egli avesse "commesso un reato particolarmente grave", fosse in contrasto con il principio della presunzione di innocenza. Ciononostante, la Corte d'Appello confermava l'ordine di detenzione.

Adita dal ricorrente, la Corte EDU rileva che nel caso concreto si sia effettivamente verificato un ritardo nella redazione del rapporto di arresto; a tal proposito, i giudici di Strasburgo ribadiscono che l'assenza di un verbale di arresto deve di per sé essere considerata un grave inadempimento, poiché la detenzione non registrata di un individuo comporta una negazione delle garanzie di fondamentale importanza contenute nell'articolo 5 della Convenzione.

In secondo luogo, la Corte EDU afferma che l'arresto del ricorrente, condotto senza una preventiva decisione del tribunale, mancasse di ogni presupposto di legittimità poiché il codice di procedura penale autorizza una tale costrizione della libertà personale per il solo caso in cui l'arresto sia eseguito immediatamente dopo la commissione del reato. Per conseguenza, è da ritenersi che pure con riferimento al secondo motivo di ricorso sia stata integrata la violazione del parametro evocato di cui all'art. 5 della Convenzione.

Diametralmente opposte sono invece le conclusioni rassegnate dalla Corte EDU circa la mancata tempestiva illustrazione dei motivi dell'arresto, per come denunciata dal ricorrente. Spiega infatti la Corte che l'obiettivo principale dell'articolo 5 § 2 non è quello di salvaguardare il diritto di un ricorrente all'assistenza legale in un procedimento penale, ma piuttosto quello di garantire una protezione contro la privazione arbitraria della libertà e consentire al ricorrente di ottenere un controllo effettivo della legittimità della sua detenzione; un controllo che non potrebbe essere effettuato qualora non fossero note le ragioni dell'arresto. Nel caso di specie, tuttavia, deve obiettarsi che un possibile ritardo nella spiegazione formale dei motivi dell'arresto del ricorrente non abbia prodotto nei suoi confronti alcun effetto pregiudizievole ai fini di una possibile contestazione della

legittimità della detenzione, dunque escludendosi ogni lamentata violazione dell'art. 5 § 2 della Convenzione.
Altra censura è quella avanzata dal ricorrente in merito all'asserita violazione dell'art. 5 § 3 della Convenzione in tema di validità del regime di custodia cautelare continuata. In senso contrario, i giudici di Strasburgo hanno sostenuto che le motivazioni argomentate dai tribunali nazionali fossero tali da integrare i presupposti di legittimità evocati dal parametro convenzionale, specie osservando che le autorità avessero comunque il dovere di proteggere i diritti delle vittime effettive e potenziali di violenti attacchi terroristici. Di qui, l'infondatezza della lesione lamentata dal ricorrente.
Infine, il signor Grubnyk ha denunciato la violazione dell'art. 6 § 2 della Convenzione circa la mancata osservanza del principio della presunzione di innocenza, laddove l'ordinanza di custodia cautelare si esprimeva nel senso che il ricorrente avesse "commesso un reato particolarmente grave". A tal riguardo, la Corte ribadisce che il principio della presunzione di innocenza, ai sensi dell'articolo 6 § 2, deve ritenersi violato qualora una decisione giudiziaria o una dichiarazione di un pubblico ufficiale riguardante una persona accusata di un reato riflettano la convinzione che quest'ultima sia colpevole pur in assenza di una formale constatazione. Nel caso in esame, la Corte rileva infatti che l'espressione utilizzata dal tribunale distrettuale potesse essere letta solo nel senso che, a parere dell'autorità giudiziaria, il ricorrente fosse effettivamente colpevole del grave reato di cui era egli stato semplicemente sospettato e non condannato all'epoca. Ne consegue la dichiarazione di fondatezza della censura mossa dal ricorrente in riferimento all'art. 6 § 2 della Convenzione.

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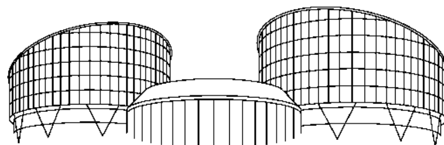

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

**CASE OF GRUBNYK v. UKRAINE**

*(Application no. 58444/15)*

JUDGMENT
STRASBOURG
17 September 2020

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Grubnyk v. Ukraine,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:
Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Latif Hüseynov,
Lado Chanturia,

Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Section Registrar,*
Having deliberated in private on 25 August 2020,
Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 58444/15) 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 Volodymyr Yuriyovych Grubnyk ("the applicant"), on 13 November 2015.
2. The applicant was initially represented by Mr V. Khilko and then by Mr A. Bogachev, lawyers practising in Odessa. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.
3. The applicant alleged, in particular, under Article 5 § 1 of the Convention that his arrest had remained unrecorded from 10.30 a.m. on 19 October 2015, when he had in fact been deprived of his liberty, until the arrest report had been drawn up the next day, and that his arrest under the arrest report of 20 October 2015 had been unlawful because there had been no grounds under domestic law to arrest him without a court decision. The applicant also alleged, under Article 5 § 2, that he had not been informed promptly of the reasons for his arrest. He further alleged, under Article 5 § 3, that the Code of Criminal Procedure had barred the use of any preventive measures other than pre-trial detention in his case. Relying on Article 6 § 2 of the Convention, the applicant complained of a breach of the principle of the presumption of innocence on account of an expression used in the initial pre-trial detention order.
4. On 21 April 2016 notice of the above complaints was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.
5. On 3 September 2019 the Chamber invited the parties to submit further observations in respect of the applicant's complaint under Article 5 § 3 of the Convention, in light of the judgment of the Constitutional Court of Ukraine of 25 June 2019 (see paragraph 53 below) any other relevant case-law of the domestic courts, notably that cited in paragraphs 54 to 56 below.

**THE FACTS**

I. THE CIRCUMSTANCES OF THE CASE
6. The applicant was born in 1983 and, at the time of the most recent communication from the parties to the Court, was detained in Odessa.
A. Background information
7. In its report of 4 November 2015 the International Advisory Panel – an international body constituted by the Secretary General of the Council of Europe to assess the effectiveness of the investigations carried out by the Ukrainian authorities into the violent clashes during the Maidan demonstrations between 30 November 2013 and 21 February 2014 and events in Odessa in May 2014 – described the events in Odessa in the following terms:

"2. In spring 2014, following the political changes in Ukraine, groups of protesters (variously referred to in this Report as 'pro-federalism' activists or as 'the pro-federalists') took positions ranging from mere opposition to the newly formed government to claims for the federalisation of Ukraine, and even secession of certain regions and their further annexation to the Russian Federation. EuroMaidan activists, for their part, countered the pro-federalists by holding demonstrations in support of a united Ukraine (also referred to in this Report as 'the pro-unity' activists).

...

3. By May 2014 Odesa was unstable following numerous mass demonstrations, seizures of official buildings, incitements to violence and clashes between the pro-federalism and pro-unity activists. On 2 May 2014 [major clashes between the pro-unity and pro-federalism activists and a fire at the Trade Union Building] occurred.

...

31. According to official statistics, as a result of the clashes on 2 May, 48 persons died (seven women and 41 men). Six persons died as a result of firearm injuries they had received during the clashes... and 42 died as a result of the fire in the Trade Union Building. Of those 42, 34 died as a direct result of the fire and eight died as a result of jumping or falling from a height ..."

8. The above events occurred against a background of events occurring in the Donetsk and Luhansk regions at around the same time. From the beginning of April 2014, armed groups started to seize official buildings there and announced the creation of self-proclaimed entities known as the "Donetsk People's Republic" and the "Luhansk People's Republic" ("DPR" and "LPR"). In response, on 14 April 2014 the Ukrainian government authorised the use of force against them in the legal form of an "anti-terrorist operation" (see *Khlebik v. Ukraine*, no. 2945/16, §§ 8-12, 25 July 2017). In a number of documents, including its declaration of 4 February 2015 concerning recognition of the jurisdiction of the International Criminal Court, the Parliament of Ukraine labelled the "DPR" and "LPR" terrorist organisations.

9. In late 2014 and early 2015 a series of explosions occurred in Odessa. They mainly targeted military facilities and buildings occupied by volunteers supporting the Ukrainian military's war effort in the east of Ukraine.

10. According to the Government, the applicant is a member of *Sut vremeni* (*Суть времени*, Essence of Time), a Russian nationalist movement with its headquarters in Moscow, Russia. The leader of the movement, Mr Kurginyan, commented on the applicant's case and arrest (see paragraphs 13 and 16 below) in a video presentation published on the movement's website on 28 October 2015. Mr Kurginyan acknowledged that the applicant used to be a member of the movement but had left before the relevant events, and that all branches of the movement in Ukraine outside of the so-called "DPR" and "LPR" had been closed. They continued to operate, however, in the "DPR" and "LPR" and their members fought Ukrainian government forces there. Mr Kurginyan denied that there was any connection between the applicant, his group's activities and the movement and suggested that the applicant was either a victim or a tool in a false flag operation organised by the Ukrainian security services.

B. Explosion of 27 September 2015 and the applicant's arrest

11. On 27 September 2015 an explosive device was placed outside the offices of the Odessa Regional Directorate of the Security Service of Ukraine (*Служба безпеки України*, "the SBU", Ukraine's domestic security agency), where it later exploded. There were no casualties.
12. On the same day the SBU started a criminal investigation into the incident, which was classified as a terrorist act. The incident received considerable media coverage.
13. According to the official notification of suspicion and charges subsequently presented to the applicant (see paragraphs 23 and 33 below), the explosion was organised by a group created and led by the applicant and composed of him and three co-conspirators, G., V. and Ch. They were driven by the desire to avenge the arrests by the Ukrainian security services of militants hostile to the Ukrainian government, and the victims of the events of 2 May 2014, for which they considered the Ukrainian authorities responsible.
From July to September 2015 the applicant planned the explosion. Communicating with co-conspirators through encrypted messaging applications, he and the members of his group had the necessary equipment purchased and the explosive device made. They also scoped the location and developed a plan for the operation.
Following the explosion of 27 September 2015 the applicant started planning a new attack: in the period from 27 September to 18 October 2015 he purchased a number of bomb-making ingredients and, in a flat he rented on Parkova Street in Odessa, started making additional explosives. He also instructed one of his co-conspirators, G., subsequently convicted of those acts (see paragraph 32 below), to study techniques for making the explosives and the latter offered to use the gunpowder he owned to make the explosive devices.
14. On 1 October 2015, following a search of Ch.'s home and the retrieval of mobile telephone data, G. was identified as a suspect. Ch. himself could not be found. A search for him as a wanted person was commenced on 23 October 2015.
15. On 15 October 2015 a considerable amount of gunpowder was discovered in G.'s home. He was later convicted in a separate case (see paragraph 32 below). A mobile telephone used to communicate with other members of the group was discovered and G. was questioned. On 19 October 2015 the investigating authority also showed him a line-up of photographs including the applicant's.
16. At 10.30 a.m. on 19 October 2015 SBU officers arrested the applicant outside his home, in his car, on suspicion of organising the explosion.
17. According to the Government, at the time of the applicant's arrest the officers introduced themselves and informed him of the reasons for the arrest and his rights, as they were required to do by the Code of Criminal Procedure (see paragraph 45 below). According to the Government, the applicant resisted arrest. The applicant denied this and stated that, in actual fact, the officers had behaved in "an aggressive manner". He also denied that the officers had informed him of the reasons for his arrest.
18. From 11 a.m. to 8.30 p.m. that day an SBU investigator conducted a search of the applicant's home. A large number of mobile telephones, SIM cards, notes, ammunition, body armour, balaclavas and camouflage clothing were seized, as well as the lease for the Parkova Street flat and other items. The applicant was also searched and numerous items were seized, including a key ring holding a number of keys.

19. From 12.02 to 7 a.m. on 20 October 2015 the investigator conducted a search of the Parkova Street flat rented by the applicant. According to the report on that search, upon the conclusion of the previous search of his home the applicant had informed the investigator that explosives and other bomb-making equipment could be found at the rented flat. The report went on to state that the applicant had freely given his consent to the search. All the residents of the block of flats had been evacuated. The applicant, unlocking the flat with his own key, had entered the flat with an explosives specialist to make sure that there was no risk of explosion. In the course of the subsequent search, certain chemicals, radio, electric and other tools and hardware had been seized.

20. The search reports were signed by the applicant, his father (the first report), the flat's owner (the second report), two attesting witnesses, the investigator and two other SBU officers, listing them all by full name and rank. They identified the dates, time of start and finish and the locations of the searches.

21. According to an expert report subsequently summarised in the charges against the applicant (see paragraph 33 below), the explosives discovered had the potential to cause damage within at least a sixty-seven metre radius.

22. At 9 a.m. the same morning the investigator drew up an arrest report stating that he had arrested the applicant at 10.30 a.m. the previous day. The text of the report included a quote from the Code of Criminal Procedure concerning the grounds for the arrest of a person without a court order, setting out verbatim sub-paragraphs 1 and 2 of Article 208 § 1 of the Code (see paragraph 45 below). The following words were underlined: "immediately after the offence, an eyewitness, including a victim, or a combination of clear signs on the body, clothing or at the scene of the event, indicate that this person has just committed an offence." The report stated that the applicant was suspected of participation in a terrorist act committed on 27 September 2015, carried out as part of a conspiracy with G., V. and Ch. It also contained an explanation of the applicant's rights, including the right to challenge the lawfulness of his arrest.

23. At 10.30 a.m. on 20 October 2015 the applicant was served with a formal notification of suspicion stating that he had, between July and September 2015, conspired with G., V. and Ch. and other unidentified individuals to plan and prepare a terrorist act, and that he had then, on 27 September 2015, committed a terrorist act, an offence under Article 258 § 2 of the Criminal Code (see paragraph 49 below).

24. It is not contested that the applicant's right to access a lawyer was respected only from 20 October 2015 after the arrest report had been drawn up and formal notification of suspicion served.

C. The applicant's placement in pre-trial detention

25. On the same day, 20 October 2015, the investigator applied to the Odessa Prymorsky District Court ("the District Court") for the applicant to be placed in pre-trial detention. The application ran to six pages and the material in support of the application to 240 pages, which included search and expert examination reports, transcripts of interviews and results of identification by photographs conducted with other suspects and witnesses, including G. (his interview and the results of identification were dated 15 and 19 October 2015, see paragraph 15 above), messages between the applicant and other suspects exchanged through encrypted communication applications, and photographic identification reports.

26. On the same day the District Court held a hearing at which it heard submissions from the prosecutor, the applicant and his lawyer. It ordered his pre-trial detention for sixty days, to be counted from 10.30 a.m. on 19 October 2015. The reasons were formulated as follows:

"The pre-trial investigation authorities suspect [the applicant] of commission of a [terrorist act] under the following circumstances:

[there followed a seventeen-paragraph description of the facts as presented by the investigator, set out in paragraph 13 above]

On 19 October 2015 [the applicant was arrested under the provision of the Code of Criminal Procedure allowing arrests without a court warrant].

On 20 October 2015 [the applicant was served with a formal notification of suspicion].

The investigator, with the prosecutor's approval, has applied for the applicant's placement in pre-trial detention, arguing that the applicant is suspected of committing a particularly grave offence, punishable by more than ten years' imprisonment ... if at liberty he may abscond from the pre-trial investigation authorities and the court, commit another criminal offence, continue his criminal activity, [or] exert unlawful influence on the victim, which indicates that it [would not be] possible to safeguard against those risks by less severe preventive measures.

[... In] the course of the pre-trial investigation it has been established that there was a risk [that the applicant would abscond]. The need to prevent new attempts to abscond is grounds for applying pre-trial detention. Other, less restrictive, preventive measures would not ensure the applicant's compliance with his [procedural obligations].

In the course of the hearing the prosecutor supported the investigator's application ...

[The applicant] and his lawyer objected ...

Having examined the material on which the application is based, having examined the suspect, his lawyer ... having considered the prosecutor's position, I come to the conclusion that the application must be granted for the following reasons.

It can be seen from the criminal case material submitted that there is a reasonable suspicion that the applicant committed the offence [under the Criminal Code provision providing for the punishment of terrorist acts], which is punishable by more than ten years' imprisonment.

The above-mentioned circumstances show that there are risks which give reason to believe that the suspect may breach the procedural obligations imposed on him by law.

The aim of the imposition of pre-trial detention on [the applicant] is the prevention of attempts to abscond from the pre-trial investigation authorities or the court; destroy, conceal or spoil any of the items or documents that are of material importance for establishing the circumstances of the criminal offence; exert unlawful influence on the victim or the witnesses in the same criminal proceedings; obstruct the criminal proceedings and commit another criminal offence.

The evidence for this is that [the applicant] committed a particularly grave offence (*доказами цього є те, що Грубник В.Ю. вчинив особливо тяжкий злочин*).

In [imposing] pre-trial detention I take into account the weighty evidence pointing to the commission of the offence by the applicant, the severity of the punishment which he faces, his age and his state of health.

I consider that the prosecutor, in the course of the hearing regarding the application for pre-trial detention, has submitted material sufficient to [support the opinion] that none of the less restrictive preventive measures would prevent the occurrence of the risks proven in the course of the hearing. There are none of the circumstances provided for by Article 183 § 2 of the Code of Criminal Procedure] that would prevent the application of pre-trial detention.
In summary, based on the material submitted, I have come to the conclusion that less restrictive preventive measures may fail to ensure that the [applicant] conduct himself in an appropriate fashion.
Also (*при цьому*), pursuant to Article 176 § 5 of the Code of Criminal Procedure, preventive measures less restrictive than pre-trial detention cannot be imposed on a person who is suspected of [the provision of the Criminal Code providing for the punishment of terrorist acts].
It is impossible to prevent the risks set out in the application by applying less restrictive preventive measures."
27. On the same date the District Court also ordered the pre-trial detention of the other two suspects.
28. The applicant appealed to the Odessa Regional Court of Appeal ("the Court of Appeal") arguing, in particular, that there had been a delay in the drawing up of his arrest report; that during that time the grounds for his arrest and his rights had not been explained to him; that there had been no grounds for an arrest without a court order since he had not been arrested immediately after the offence; that the evidence submitted by the investigator was insufficient to support a reasonable suspicion against him; that the District Court had not sufficiently taken into account his strong ties to the community; and that it had not properly examined the possibility of using a non-custodial preventive measure. In view of those arguments, the applicant asked the Court of Appeal to quash the detention order and dismiss the investigator's application. He further argued that the statement in the detention order to the effect that he had "committed a particularly grave offence" was at odds with the principle of the presumption of innocence.
29. On 28 October 2015 the Court of Appeal upheld the detention order. In response to the applicant's arguments it stated, in particular, that in the course of the hearing before the District Court it had been sufficiently proven that there was a reasonable suspicion against him and that there was a risk that he could abscond or obstruct the criminal proceedings. The Court of Appeal was of the opinion that the District Court had taken into account the particular seriousness of the offence of which the applicant was suspected, the severity of the punishment he faced, and the danger presented to the public by the offence of which he was suspected. It decided that no other preventive measure would be adequate in view of the risks he presented.
30. Concerning the grounds for the applicant's arrest, the investigator's application for pre-trial detention, the District Court's and the Court of Appeal's decisions all contained the same statement: "On 19 October 2015 [the applicant] was arrested under Article 208 of the Code of Criminal Procedure" (see paragraph 45 below).
D. Subsequent criminal proceedings
31. On 17 December 2015 the District Court extended the detention of the applicant and the other two suspects. No copy of the relevant detention order was provided to the Court.
32. On 9 February 2016 the proceedings against G. were split into a separate case. He pleaded guilty and on 29 March 2016 the District Court convicted him of participation in the creation of a terrorist

group, commission of a terrorist act, preparation of terrorist acts, and unlawful possession of firearms. Reducing the sentence due to G.'s cooperation, the court convicted him to four and a half years' imprisonment.
33. On 11 March 2016, almost five months after his arrest, the charges against the applicant were amended. He was notified that he was accused of creation, leadership of and membership in of a terrorist group, unlawful fabrication of explosives, unlawful possession of firearms (two handguns, ammunition and a silencer), commission of a terrorist act, and preparation of new terrorist acts after the explosion at the SBU building.
34. On 30 March 2016 the District Court again extended the applicant's detention.
35. On 8 April 2016 the Court of Appeal upheld that extension order. It pointed out that, according to the material provided by the prosecution, the suspect had organised clandestine activities, searched for material for the commission of terrorist acts, and ensured the safe movement of members of the terrorist group. Those elements indicated that, if the suspect were at liberty, there was a risk that he would commit new serious offences, abscond or interfere with the investigation. The court referred to Article 176 § 5 of the Code of Criminal Procedure, which precluded the granting of bail or imposition of other non-custodial preventive measures in respect of individuals suspected of or charged with certain terrorism-related or national security offences (see paragraph 40 below). The court rejected the applicant's argument to the effect that that provision was contrary to Article 5 of the Convention. It held that Article 5 provided that detention could be effected for the purpose of bringing an individual before the competent legal authority on reasonable suspicion of having committed an offence or if it was reasonably considered necessary to prevent his committing an offence or fleeing after having done so. The District Court had established the presence of exactly such risks in the case.
36. On 12 April 2016 the bill of indictment in respect of the applicant was transferred to the District Court for trial.
37. Subsequently the District Court extended the applicant's detention on multiple occasions. According to the most recent information from the parties, on 3 October 2019 his detention was extended until 2 December 2019.
38. According to media reports, on 26 November 2019 the District Court extended the applicant's detention until 25 January 2020 but on 29 December 2019 he was released and handed over to the so-called "DPR" as part of a large exchange of prisoners agreed through negotiations between Ukraine and Russia.
II. RELEVANT DOMESTIC LAW
A. Constitution of Ukraine 1996
39. Article 29, which is relevant to the case, reads as follows:
"Every person has the right to freedom and personal inviolability.
No one shall be arrested or held in custody other than pursuant to a reasoned court decision and only on the grounds and in accordance with the procedure established by law.
In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if

he or she has not been provided, within seventy-two hours of the time of detention, with a reasoned court decision in respect of the holding in custody…"

B. Code of Criminal Procedure 2012

40. Article 176 § 1 provides for the following preventive measures:

(i) a personal undertaking of the defendant;

(ii) a personal warranty of a third party;

(iii) bail;

(iv) house arrest; and

(v) pre-trial detention.

The investigating judge or the court must reject an application for a preventive measure if the investigator or the prosecutor has not proven that there are sufficient grounds to believe that none of the more lenient preventive measures would be sufficient for the prevention of the established risk or risks. The most lenient preventive measure is a personal undertaking and the most severe is pre-trial detention (Article 176 § 2).

Preventive measures are applied by the judge at the request of the investigator, on application by the prosecutor, or on application by the investigator approved by the prosecutor (Article 176 § 4).

Article 176 § 5, added by the Act of 7 October 2014 (hereinafter also "the Bail Exclusion Clause", see paragraph 50 below regarding its legislative history), provides that "preventive measures of a personal undertaking, a personal warranty, house arrest and bail may not be imposed on people who are suspected of or charged" with:

(i) terrorism (Article 258 of the Criminal Code, see paragraph 49 below) and certain terrorism-related offences: creation of a terrorist group, recruitment for the purposes of terrorism, public appeals to commit a terrorist act and terrorism financing;

(ii) certain offences against national security, such as treason, attacks on the territorial integrity of Ukraine, creation of an unlawful armed group, and so forth.

41. Article 177 § 1 provides that the purpose of preventive measures is to ensure compliance with procedural obligations and prevent the risk of the suspect or accused:

(i) absconding from the pre-trial investigation authorities and/or the court;

(ii) destroying, concealing or spoiling any of the items or documents that are of essential importance for establishing the circumstances of the criminal offence;

(iii) exerting unlawful influence on the victim, witnesses, other suspects, the accused, expert…;

(iv) obstructing the criminal proceedings in any other way;

(v) committing another criminal offence or continuing the criminal offence of which he or she is suspected or accused.

Article 177 § 2 provides that a preventive measure can be applied provided that there is a reasonable suspicion that the person has committed a criminal offence and there are risks giving sufficient grounds for the judge to believe that the suspect, accused or convicted person could commit the actions specified in Article 177 § 1.

42. Article 183 defines pre-trial detention as an "exceptional" preventive measure which can only be applied where the prosecutor has proven that no less restrictive preventive measure would prevent the risks set out in Article 177 of the Code (see paragraph 41 above). Moreover, it provides that only the categories of defendants explicitly mentioned in paragraph 2 of that Article can be

subjected to pre-trial detention. Among these are certain defendants with prior convictions and defendants without prior convictions accused of offences punishable by more than five years' imprisonment (for the classification of offences under the Criminal Code, see paragraph 48 below).

43. Article 194 § 1 provides that, in examining an application for a preventive measure, the court must consider whether the following circumstances have been proven:

(i) there is a reasonable suspicion against the suspect or accused;

(ii) the prosecutor asserts in the application for a preventive measure, and there are sufficient grounds to believe, that there is at least one of the risks specified in Article 177;

(iii) less severe preventive measures would be insufficient to prevent the relevant risks identified in the application.

Article 194 § 2 provides that the court must refuse to apply a preventive measure if the prosecutor has failed to prove the existence of all the circumstances specified in Article 194 § 1.

Article 194 § 3 provides that if the prosecutor has proven the existence of a reasonable suspicion, but not the existence of the risks and an inability to prevent them, the court may bind the suspect or the accused over to appear when summoned by the court or another authority. This binding over order is not considered a "preventive measure".

44. Article 198 provides that the findings made in the order imposing a preventive measure concerning any circumstances regarding the substance of the suspicion or charges against the applicant are not binding (*не мають преюдиціального значення*) on the trial court, investigating authority and prosecutors in the course of the same and other criminal proceedings.

45. Article 208 authorises arrests without a court order in the following circumstances and subjects them 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 a crime for which imprisonment 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 (*безпосередньо*) after a criminal offence the statements of an eyewitness, including the victim, or [a combination] of clear signs on the body, clothes or at the scene of the event indicate that the person has just committed an offence...

...

4. The ...official who carried out the arrest shall immediately inform the arrested person, in a language which he or she understands, of the grounds for the arrest and of the crime he or she is suspected. The official shall also explain to the arrested person his or her rights: to be legally represented; to be provided with medical assistance; to make statements or to remain silent; to inform [third] parties ... of his or 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 or 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 his or her signature is obtained..."

46. Article 276 provides that when a person has been arrested, a formal notification of suspicion must be served on him or her. From that moment, the person acquires the procedural status of a suspect. On service of the formal notification, he or she must be informed of his or her procedural rights, including the right to remain silent and have legal assistance.

C. Code of Criminal Procedure 1960

47. The relevant provisions of the Code, in effect until 18 November 2012, provided:

Article 106. Arrest of a suspect by the body of inquiry

"The body of inquiry shall only be entitled to arrest a person suspected of a criminal offence for which a penalty in the form of deprivation of liberty may be imposed on one of the following grounds:

(1) if the person is discovered while or immediately after committing an offence;

(2) if eyewitnesses, including victims, directly identify this person as the one who committed the offence;

(3) if clear traces of the offence are found either on the suspect's person, or on his clothing, or with him, or in his home.

If there is other information giving rise to grounds for suspecting a person of a criminal offence, a body of inquiry may arrest that person if the latter attempts to flee, or does not have a permanent place of residence, or if the identity of that person has not been established. ..."

Article 115. Arrest of a suspect by an investigator

"An investigator may arrest ... a person suspected of having committed a crime in accordance with the procedure provided for in [Article] 106 ... of the Code. ..."

D. Criminal Code 2001

48. Article 12 of the Code divides criminal offences into four categories, ranging from minor to particularly grave offences, based on the severity of the punishment imposed by the Code. A particularly grave offence is an offence punishable by more than ten years' imprisonment.

49. Article 258 § 2 provides for imprisonment of between seven and twelve years for a terrorist act committed as part of a conspiracy or for a terrorist act which has caused substantial pecuniary damage or other serious consequences.

E. Legislative history of the Bail Exclusion Clause

50. The of 7 October 2014, which introduced the Bail Exclusion Clause into the Code of Criminal Procedure, originated in a draft law entitled "Draft law concerning introduction of amendments to the Criminal and Criminal Procedure Codes of Ukraine concerning certainty of punishment for certain offences against national and public security and corruption offences" ("*Про внесення змін до Кримінального та Кримінального процесуального кодексів України щодо невідворотності покарання за окремі злочини проти основ національної безпеки, громадської безпеки та корупційні злочини*").

The draft law primarily concerned introduction of a new system of *in absentia* proceedings for the national security and corruption-related offences. The explanatory note to the draft was mainly dedicated to that procedure. The only provision of the explanatory note concerning the Bail Exclusion Clause read:

"introduction of pre-trial detention as the only preventive measure for separatist and terrorist offences will increase the speediness of pre-trial investigations concerning them" (*запровадження*

*єдиного можливого запобіжного заходу у вигляді тримання під вартою за сепаратистські та терористичні злочини підвищить оперативність проведення їх досудового розслідування*).

F. Constitutional Court Act 2017

51. The Act, which came into force on 3 August 2017, introduced, for the first time in Ukrainian law, the right for individuals to apply directly to the Constitutional Court for review of constitutionality of legislative provisions applied by courts in their cases. This change was based on the constitutional amendments enacted in 2016.

Section 55 of the Act provides that a person considering that a provision of an Act of Parliament applied in his or her case can lodge a constitutional complaint with the Constitutional Court. The complaint can be lodged once ordinary courts have delivered a final decision in the case.

52. Section 91 of the Act provides that laws declared unconstitutional lose legal force from the day of delivery of the Constitutional Court's decision declaring them unconstitutional, unless the Constitutional Court rules that they would lose legal force from a later date.

G. The Constitutional Court's decision concerning the Bail Exclusion Clause

53. On 25 June 2019 the Constitutional Court declared the Bail Exclusion Clause contrary to Article 29 of the Constitution guaranteeing the right to freedom and personal inviolability (see paragraph 39 above). The case had been brought by four applicants and concerned the application of the Bail Exclusion Clause in their cases (see paragraph 51 above concerning this procedure). However, the Constitutional Court's decision did not describe the circumstances of those cases. The decision was based on the following reasons:

(i) the Bail Exclusion Clause prevented the courts from issuing duly motivated decisions concerning pre-trial detention. Citing *Korniychuk v. Ukraine* (no. 10042/11, § 57, 30 January 2018), the court pointed out that according to the Court's case-law, justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities and the judicial officer is required to give relevant and sufficient reasons for the detention;

(ii) in accordance with the judgments in *Khayredinov v. Ukraine* (no. 38717/04, §§ 29 and 31, 14 October 2010) and *Kharchenko v. Ukraine* (no. 40107/02, § 80, 10 February 2011), the courts were under an obligation to consider other preventive measures as an alternative to detention. However, the Bail Exclusion Clause had taken away the courts' right to impose preventive measures that were less restrictive than detention;

(iii) Article 29 of the Constitution required a reasoned court decision as grounds for detention. Such a decision had to be fair and could not be merely formalistic. This reduced the risk of arbitrariness which would exist if detention was based merely on the gravity of the offence without an examination of the specific circumstances of the case and reasons for detention;

(iv) the Bail Exclusion Clause allowed for detention on the basis of formalistic court decisions, based purely on a formal classification of the offence, which was contrary to the principles of the rule of law and did not provide for a correct balance between the public interests justifying detention and individual liberty, a requirement inherent in Article 29 and other provisions of the Constitution.

H. Domestic case-law concerning detention of defendants charged with terrorism and national security-related offences

54. On 13 October 2016 the Kharkiv Court of Appeal quashed a detention order in respect of a defendant (applicant in case no. 38718/16 *Aleksandrovskaya v. Ukraine*, communicated on 18 February

2017), charged with acting to undermine the territorial integrity of Ukraine, an offence covered by the Bail Exclusion Clause, and placed the defendant under house arrest. Relying essentially on Articles 2, 3 and 5 of the Convention, the court held that the defendant's continued detention could adversely affect her medical situation, and that it had not been persuasively demonstrated that there was a risk that she might evade or hinder the ongoing investigation.

55. On 12 March 2018 the Kyiv Holosiyivsky District Court rejected a prosecutor's application to extend detention of a defendant (applicant in case no. 71818/17 *Avraimov v. Ukraine*, communicated on 5 January 2018) charged with terrorism financing, an offence under Article 258-5 of the Criminal Code, covered by the Bail Exclusion Clause. The court released the defendant, which had been in detention since 24 April 2017, and bound him over to appear when summoned.

The court found that the prosecution had failed to prove that the defendant represented any risks envisaged by Article 177 of the Code of Criminal Procedure (see paragraph 41 above). The court had taken into account that the applicant had permanent accommodation and strong social ties, namely minor children and an elderly mother dependent on him and had no criminal record. The court cited *Jablonski v. Poland* (no. 33492/96, § 80, 21 December 2000) for the proposition that while the persistence of reasonable suspicion that the person arrested has committed an offence was a condition *sine qua non* for the lawfulness of the continued detention, after a certain lapse of time it no longer sufficed and judicial authorities had to give other grounds to extend deprivation of liberty.

56. In another case (domestic case no. 11-cc/796/4904/2017), on 27 September 2017 the Kyiv City Court of Appeal quashed a detention order and released a defendant, Mr O.L., charged with conspiracy to commit a coup d'état or insurrection, an offence under Article 109 of the Criminal Code, covered by the Bail Exclusion Clause. The Court of Appeal found that neither the reasonable suspicion in respect of the charges presented nor the risks the preventive measure was supposed to safeguard against have been proven by the prosecution.

III. RELEVANT INTERNATIONAL MATERIAL

A. Office of the United Nations High Commissioner for Human Rights (OHCHR)

57. The report of the OHCHR on the human rights situation in Ukraine from 16 May to 15 August 2016 reads:

"81. OHCHR has documented a clear and consistent trend that human rights violations against persons charged with conflict-related or national security and 'terrorism'-related offenses often begin with arbitrary pre-trial detention. According to the Code of Criminal Procedure, as amended in October 2014, pre-trial detention is mandatory for all conflict-related or national security and 'terrorism'-related cases. According to the Minister of Justice, "custodial detention for separatist and terrorist crimes... increases the efficacy of a pre-trial investigation".

...

83. Through trial monitoring, OHCHR has observed that neither the prosecution nor the judges address the grounds for continued detention at review hearings. Courts rarely examine alternatives to pre-trial detention, such as bail or other conditions to guarantee appearance for trial, which would render detention unnecessary in particular cases...

84. OHCHR finds that the relevant provisions of the Code of Criminal Procedure providing for mandatory pre-trial detention for accused charged with conflict-related or national security or terrorism offenses are contrary to international human rights standards and result in excessive and

at times arbitrary detention. In May 2015, Ombudsperson filed an appeal with the Constitutional Court, challenging the constitutionality of the amendments citing the jurisprudence of the European Court of Human Rights. However, the Ombudsperson's Office withdrew the appeal, for unexplained reasons."

B. International Advisory Panel

58. In its report on the investigations of the events of 2 May 2014, the International Advisory panel criticised the failure to impose a preventive measure on a senior police official suspected of implication in or failure to prevent the violence on that day, which resulted in his fleeing, allegedly to the self-proclaimed "Moldavian Republic of Transdniestria" (paragraphs 86 and 230 of the report), which has an extensive border with the Odessa Region and is located about 72 kilometres by road from Odessa. Regarding its status, see *Mozer v. the Republic of Moldova and Russia* ([GC], no. 11138/10, §§ 99-112, 23 February 2016). The report also documented several other instances of defendants suspected and charged in connection with 2014 events in Odessa absconding (paragraphs 143, 144, 162, 163 and 277 of the report).

**THE LAW**

I. ALLEGED VIOLATIONS OF ARTICLE 5 § 1 OF THE CONVENTION

59. The applicant complained that there had been violations of Article 5 § 1 of the Convention because he had been arrested without a court decision, the arrest report had only been drawn up the day after his arrest, and the arrest report had been worded in vague terms. The relevant parts of Article 5 § 1 read:

"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;

..."

A. Admissibility

60. The Court notes that this part of the application 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.

B. Merits

*1. The parties' submissions*

(a) The applicant

61. The urgency of the situation had not prevented the officers conducting the search from drawing up two detailed search reports, running to seven pages each, printed on a laptop. This demonstrated that they had had sufficient time to formalise the details of the search. The Government had not explained why the same could not have been done in respect of the arrest report. There had been

many officers involved and so it had been possible. The applicant considered that the real reason for the delay had been to delay his access to a lawyer.

62. The fact that the arrest report had correctly indicated the date of the actual arrest was of little relevance, since the report itself had been drawn up with a delay. Before it had been drawn up on 20 October 2015, no other record of detention had existed. In *Smolik v. Ukraine* (no. 11778/05, §§ 43-48, 19 January 2012), the Court had found that a subsequent acknowledgement of the actual date of arrest in a judicial decision had not been sufficient to cure the absence of a contemporaneous record of arrest. There had been no public record of the arrest as soon as it had occurred, resulting in the denial of procedural safeguards. This had prejudiced the applicant's situation as he had not been informed of his rights to remain silent and to a lawyer, as a result of which supposedly self-incriminating statements had been recorded in the search reports.

63. The crime the applicant had been charged with had taken place weeks before his arrest. No arrest could therefore be made without a court order as the conditions for a "warrantless" arrest set out in Article 208 of the Code of Criminal Procedure had not been met. The report had not indicated exactly who had "identified" the applicant as the perpetrator or which clear "signs" had indicated that he had just committed the crime. There had been a breach of the domestic law in that respect.

(b) The Government

64. The Government referred to the events in certain areas of the Donetsk and Luhansk regions, where the anti-terrorist operation had been conducted, since April 2014, against the so-called "DPR" and "LPR", considered by the Government to be illegal armed groups and terrorist organisations. The very decision to launch that military operation had been motivated by the rapid proliferation of the separatist movement in a number of regions of Ukraine, including Odessa. That movement benefitted from what the Government described as the "comprehensive support" of the Russian Federation. Odessa remained one of the cities with the highest levels of terrorist threat. The applicant was a member of *Sut vremeni*, the same movement whose members were also involved in the armed activities of the "DPR" and "LPR" (see also paragraph 10 above).

65. The Government pointed out that the situation in the present case was to be distinguished from cases where the Court had condemned the practice of unrecorded detention by the police. Notably, it had been recorded in the arrest report that the arrest had taken place at 10.30 a.m. on 19 October 2015 (see paragraph 22 above).

66. The authorities had had strong grounds to believe that the applicant was engaged in terrorist activity and had been under an obligation to act with the utmost urgency, most notably to extract the explosives from the block of flats where they were stored. After that had been done the applicant had been escorted to the office where the arrest report had been finalised.

67. The delay in the finalisation of the report had not affected the applicant's position: he had been provided with a defence counsel and brought before a court already on 20 October 2015. The court, in its order authorising the applicant's detention, had noted that he had been taken into custody at 10.30 a.m. on 19 October, so his arrest had been subject to a judicial review and his complaints in that respect had been found to be unsubstantiated.

68. The arrest report had contained specific information concerning the grounds for the applicant's arrest, including the offence of which he had been suspected, the names of his suspected accomplices, and the time and place where the offence had been committed. This demonstrated that

there had been a reasonable suspicion against him. The matter had been examined by two levels of domestic court, which had found that the arrest had been in compliance with domestic law.

*2. The Court's assessment*

(a) Delay in the drawing up of the arrest report

69. It is not disputed that the applicant was first deprived of his liberty at 10.30 a.m. on 19 October 2015 (see paragraph 16 above) and that there was a delay of more than twenty-three hours between the actual time of arrest and drawing up of the arrest report the next day (see paragraph 22 above). While the applicant complained about the delay (see paragraph 28 above), no explanation was ever provided for it in the domestic proceedings.

70. The Court has found violations of Article 5 § 1 in a number of cases where there was a delay in the drawing up of such reports (see, among many other examples, *Grinenko v. Ukraine*, no. 33627/06, §§ 9, 75 and 76, 15 November 2012, where the delay was in excess of fourteen hours, and *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, § 78, 26 June 2018, where, in respect of eight applicants, delay lasted from seven to twenty-three hours).

71. It is true that in the present case the authorities immediately acknowledged that the arrest report had been made with a delay. However, in *Smolik v. Ukraine* (no. 11778/05, § 46, 19 January 2012) the Court held that the subsequent acknowledgement of a delay in the recording of an arrest could not remove the problem under Article 5 § 1 in the absence of contemporaneous records. In this respect it recalls that the absence of an arrest record must in itself be considered a serious failing, as it has been the Court´s constant view that unrecorded detention of an individual is a negation of the fundamentally important guarantees contained in Article 5 of the Convention (see, *mutatis mutandis*, *Fortalnov*, cited above, §§ 76 and 79; see also *Makarenko v. Ukraine*, no. 622/11, §§ 60 and 65, 30 January 2018; *Beley v. Ukraine* [Committee], no. 34199/09, § 60, 20 June 2019). The lack of a necessary record of a person's detention as a suspect may deprive that person of access to a lawyer and all other rights of a suspect (see, *mutatis mutandis*, *Fortalnov*, cited above, § 77).

72. The Court sees no reason to reach a different conclusion in the particular circumstances of the present case. As to the Government's argument that the applicant was not affected, the Court notes that on account of the delay in drawing up of the arrest report, the applicant's access to a lawyer and notification of his rights as a defendant were delayed (see paragraphs 22 and 24 above).

73. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of the delay in the drawing up of the arrest report.

(b) Arrest without a prior court decision

74. Article 208 § 1 of the Code of Criminal Proceedings provides for only two situations where a person can be arrested with a prior court decision (see paragraph 45 above):

(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 a combination of clear signs on the body, clothes or at the scene of the event indicate that the person has just committed an offence.

75. It is the latter of the two grounds that was underlined in the arrest report (see paragraph 22 above). It has never been suggested by any domestic authority that the former of the two grounds was also applicable.

76. The applicant argued before this Court, as he had done at the domestic level, that the second sub-clause of Article 208 § 1 did not apply to him. Firstly, it was unclear from the arrest report who the "eyewitnesses" had been who implicated him in that alleged offence. Secondly, the requirement of "immediacy" was not met since several weeks passed between the terrorist act of which the applicant had been suspected at the time and his arrest (see paragraph 63 above).

77. The Court notes that the authorities did possess evidence of at least one eyewitness, the applicant's co-conspirator G. (see paragraphs 25 and 32 above). The relevant domestic law provisions required, however, that such an eyewitness identification occur "immediately" after the offence. It remains to be seen whether this requirement of "immediacy" was met.

78. The parties have not pointed to any domestic case-law which would define the exact meaning of the term "immediate" in that context.

79. In its previous judgments the Court found violations of Article 5 § 1 in respect of arrests effected under the equivalent provision of the 1960 Code of Criminal Provision (see paragraph 47 above), which also allowed arrest without a court decision "immediately after" an offence was committed, where considerable time elapsed between the alleged offence and the arrest (see, for example, *Malyk v. Ukraine*, no. 37198/10, § 27, 29 January 2015, where the period concerned was half a year, and *Strogan v. Ukraine*, no. 30198/11, § 88, 6 October 2016, where it was four months).

80. In the present case, the applicant was arrested about three weeks after the offence in question, the terrorist act at the SBU building (see paragraphs 11 and 16 above).

81. The applicant argued before the domestic courts that such a delay was incompatible with the requirement of "immediacy" under the relevant provision of the Code of Criminal Procedure. Given that the literal language of the Code tended to support the applicant's interpretation, his argument does not appear frivolous and required a response. However, the domestic courts, in particular the Court of Appeal, did not address it (see paragraph 29 above).

82. The Court does not exclude that there might have been other legal grounds under domestic law for the applicant's arrest, but the Court is not in a position to speculate on that point since the domestic authorities did not refer to any such alternative grounds.

83. In summary, neither the domestic courts provided no explanation for why sub-paragraph 2 of Article 208 § 1 of the Code of Criminal Procedure could serve as the legal basis for the applicant's warrantless arrest, despite the applicant's argument, grounded in the language used in the relevant legislative provision itself, to the contrary. Nor did they point to any other provisions of domestic law which would provide a legal basis for the applicants' detention.

84. In such circumstances, the Court is unable to find that the applicant's arrest in the absence of a prior court decision was "in accordance with a procedure prescribed by law".

85. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest without a prior court decision.

(c) The wording of the arrest report

86. In view of the findings above there is no need to examine the complaint under Article 5 § 1 of the Convention concerning the wording of the arrest report.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

87. The applicant complained of a violation of Article 5 § 2 of the Convention:

"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

A. Admissibility

88. 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.

B. Merits

*1. The parties' submissions*

(a) The applicant

89. The applicant submitted that the officers who had arrested him had not informed him of the reasons for either his arrest or the search (see paragraph 17 above). The search reports (see paragraphs 18 and 19 above) had contained no indications which would have allowed him to understand those reasons, and there had been no other document which had contained that information. In the course of the first search, at his home, the officers had discovered a lease for the rented flat (see paragraph 18 above). It had been on that discovery and not his statements that the decision to search the rented flat had been based.

90. Furthermore, his keys had been seized from him in the course of the first search and, therefore, he could not have opened the rented flat with his own key as indicated in the report on the second search (see paragraphs 18 and 19 above). He had made no objection to the content of the latter report as he had had no lawyer at the time and had only been provided with one on 20 October 2018. In any event, the officers concerned had extensively questioned him after the arrest without explaining his rights to him or ensuring that he had access to a lawyer. The authorities could not therefore be allowed to "profit from their wrongdoing" by relying on the statements obtained from him during the searches in breach of his rights as evidence that he had been informed of the reasons for his arrest.

91. The applicant relied on the case of *Zuyev v. Russia* (no. 16262/05, §§ 84 and 85, 19 February 2013), where the Court found a fourteen-hour delay too long to satisfy the requirements of Article 5 § 2.

(b) The Government

92. The applicant had been informed orally of the reasons for his arrest immediately after it had taken place, as required by law (see paragraph 45 above). Article 5 § 2 did not require the reasons to be given in writing or otherwise in a particular form (citing *Kane v. Cyprus* (dec.), no. 33655/06, 13 September 2011).

93. In the course of the first search conducted immediately after the arrest in his home, the applicant had informed the officers that the bomb-making equipment was at his rented flat. This demonstrated that he had fully understood the nature of suspicions against him. Article 5 § 2 allowed the reasons for the arrest to be provided in the course of post-arrest interrogations or questioning (citing *Murray v. the United Kingdom*, 28 October 1994, § 77, Series A no. 300-A). In any event, detailed written reasons for the arrest had been served on the applicant the very next day, on 20 October 2015, which had been prompt enough in the context to meet the requirements of Article 5 § 2.

*2. The Court's assessment*

94. The Government submitted that at the time of arrest the SBU officers had informed the applicant of the reasons for the arrest orally, as required by law (see paragraph 92 above). The applicant

denied this (see paragraph 89 above). However, while the Government's explanations are corroborated by the context and sequence of events, the applicant's denial is vague, unsubstantiated and does not appear plausible. Notably, he did not explain in any detail what precisely the officers had told him concerning his arrest and the searches, whether he had demanded an explanation and, if so, what the response had been.

95. He appeared to concede that the security officers had questioned him about the explosives in the course of the search (see paragraph 90 above) but insisted that that fact, and his responses recorded in the search report, could not be considered a valid notification for the purposes of Article 5 § 2, as his statements had been obtained in breach of his right to a lawyer. However, even in the absence of any response on his part, the tenor of the questions must have given him an indication of the reasons for his deprivation of liberty.

96. Moreover, the issue of whether any questioning in the course of the search led to a violation of the applicant's right to legal assistance could be relevant in the context of Article 6 of the Convention. However, this matter is not part of the present application.

97. The primary goal of Article 5 § 2 is not to safeguard an applicant's right to legal assistance in the criminal proceedings against him but rather to provide a safeguard against arbitrary deprivation of liberty and allow the applicant to obtain an effective review of the lawfulness of his detention, which would not be possible without knowing the reasons for it (see *Van der Leer v. the Netherlands*, 21 February 1990, § 28, Series A no. 170-A). The Court's judgment in *Dikme v. Turkey* (no. 20869/92, §§ 54-57, ECHR 2000-VIII) provides a good example of this distinction: in that case, even though there were credible allegations that the applicant was ill-treated and questioned without a lawyer, the Court found no violation of Article 5 § 2 because the very tenor of that potentially problematic questioning had communicated to the applicant the reasons for the arrest.

98. Be it as it may, given the situation in Odessa at the relevant time and the notorious nature of the series of explosions in question (see paragraphs 9 and 12 above), the very fact that a search was conducted by SBU officers, accompanied by a demining expert, in the course of which explosive devices were discovered must have largely communicated to the applicant the reasons for his deprivation of liberty (compare, *mutatis mutandis*, *Öcalan v. Turkey* (dec.), no. 46221/99, 14 December 2000).

99. There is no indication that any possible delay in the formal explanation of the reasons for the applicant's arrest was in any way prejudicial to him in terms of him being able to challenge the lawfulness of his detention: in fact, he appeared before the judge the day after his arrest and, at that time, he and his lawyer already had the formal notification of suspicion against him.

100. There has, accordingly, been no violation of Article 5 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

101. The applicant complained that the application in his case of Article 176 § 5 of the Code of the Criminal Procedure, which precluded the use of non-custodial preventive measures to terrorism suspects, had resulted in a violation of Article 5 § 3 of the Convention, which reads:

"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."

A. Admissibility

102. 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.

B. Merits

*1. The parties' submissions*

(a) The applicant

103. Article 176 § 5 of the Code of Criminal Procedure (see paragraph 40 above, hereinafter also "the Bail Exclusion Clause") barred the use of any preventive measure other than pre-trial detention in respect of persons accused of involvement in terrorism, like the applicant. For him, the situation was analogous to *S.B.C. v. the United Kingdom* (no. 39360/98, § 23, 19 June 2001) and *Boicenco v. Moldova* (no. 41088/05, §§ 135-138, 11 July 2006) and also disclosed a violation of Article 5 § 3.

104. After the initial pre-trial detention order the courts had continued to invoke the Bail Exclusion Clause in their subsequent decisions. On 8 April 2016 the Court of Appeal had even explained why it considered the Bail Exclusion Clause compliant with Article 5 of the Convention (see paragraph 35 above). This demonstrated that reliance on the provision in question was important and far from an incidental formal reference with no effect, as the Government had pretended.

105. Contrary to what the Government had suggested, the courts could not in any way derogate from the Bail Exclusion Clause. In that connection the applicant submitted a press release from the SBU dated 15 October 2005 announcing that criminal proceedings had been instituted against a judge in the Donetsk region who had released a person suspected of terrorism financing on bail. The applicant also referred to a report of the OHCHR criticising the Bail Exclusion Clause (see paragraph 57 above).

106. In further observations submitted at the Chamber's invitation (see paragraph 5 above), the applicant maintained his initial position and submitted that the Constitutional Court's decision of 25 June 2019 declaring the Bail Exclusion Clause unconstitutional and other recent domestic case-law could be seen as measures which were, in principle, favourable to him. Those developments did not mean, however, that the authorities acknowledged a violation of the applicant's rights or afforded redress to him. Notably, none of the decisions extending his detention had been set aside. The Constitutional Court's decision had no retroactive effect. Therefore, the applicant could still claim to be a "victim" of a violation of his rights under Article 5 § 3 and his complaint remained admissible.

(b) The Government

107. The Government submitted that there had only been a *pro forma* reference to the Bail Exclusion Clause in the court decision ordering the applicant's detention. The court had primarily relied on grounds such as the strong suspicion that the applicant had committed a terrorist attack and the risk that he would continue criminal activities or abscond if released. The applicant's detention had been necessary because he was a member of "a pro-Russia underground terrorist network" and if at large could abscond as another suspect, Ch., had done (see paragraph 14 above). Moreover, the fact that after the attack on the SBU building the applicant had continued to make explosive devices had demonstrated his intention to continue his dangerous criminal activities. The applicant would therefore have been detained regardless of the Bail Exclusion Clause.

108. For this reason, the speculative question of whether, in the absence of that legislative provision, the applicant would have been placed in detention, was irrelevant.

109. In further observations submitted at the Chamber's invitation (see paragraph 5 above), the Government reported that, after the period covered by their initial observations, the applicant's detention continued to be extended (see paragraph 37 above).

*2. The Court's assessment*

(a) Relevant general principles

110. Whether it is reasonable for an accused to remain in detention must be assessed on the facts of each case and according to its specific features. Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see *Buzadji*, cited above, § 90, with further references). Any system of mandatory detention on remand is *per se* incompatible with Article 5 § 3 (see *Ilijkov v. Bulgaria*, no. 33977/96, § 84, 26 July 2001).

111. It primarily falls to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. Accordingly, they must, with respect for the principle of the presumption of innocence, examine all the facts militating for or against the existence of the above-mentioned requirement of public interest or justifying a departure from the rule in Article 5, and set them out in their decisions on applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see *Buzadji*, cited above, § 91).

112. The persistence of a reasonable suspicion is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices: the Court must then establish (1) whether other grounds cited by the judicial authorities continue to justify the deprivation of liberty and (2), where such grounds were "relevant" and "sufficient", whether the national authorities displayed "special diligence" in the conduct of the proceedings. The Court has also held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (ibid., § 87).

113. That requirement on the judicial officer to give relevant and sufficient reasons for the detention – in addition to the persistence of reasonable suspicion – applies already at the time of the first decision ordering detention on remand (ibid., § 102).

114. When deciding whether a person should be released or detained, the authorities are obliged to consider alternative means of ensuring his or her appearance at trial (ibid., § 87).

115. Justifications which have been deemed "relevant" and "sufficient" reasons (in addition to the existence of reasonable suspicion) in the Court's case-law, have included grounds such as the danger of absconding, the risk of pressure being brought to bear on witnesses or of evidence being tampered with, the risk of collusion, the risk of reoffending, the risk of causing public disorder and the need to protect the detainee (ibid., § 88).

(b) Application of the relevant principles to the present case

116. The Court has held, on several occasions, that legislative schemes limiting the domestic courts' decision-making powers in matters of pre-trial detention breached Article 5 § 3 of the

Convention (see *S.B.C. v. the United Kingdom*, no. 39360/98, §§ 23 and 24, 19 June 2001; *Boicenco v. Moldova*, no. 41088/05, §§ 134-38, 11 July 2006; and *Piruzyan v. Armenia*, no. 33376/07, §§ 105 and 106, 26 June 2012).

117. In this context the Court notes the Constitutional Court's decision to declare unconstitutional the Bail Exclusion Clause on the grounds that its operation in practice limited the domestic courts' ability to issue properly reasoned detention orders (see paragraph 53 above). It is a matter of satisfaction for the Court that the Constitutional Court's decision eliminated the risk (also stressed by the OHCHR – see paragraph 57 above) that the Bail Exclusion Clause would have such a negative effect in future cases.

118. The Court reiterates, however, that its task is not to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they affected the applicant gave rise to a violation of the Convention (see *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X). As stated above, the Constitutional Court's decision was primarily focused on the Bail Exclusion Clause preventing the courts from properly reasoning the detention orders, which is also a matter that is closely associated with the particular circumstances of a given case.

119. Contrary to the situation in the cases cited in paragraph 116 above, in the present case the domestic courts had the power to review the existence of a reasonable suspicion against the defendant, examine the evidence in this respect and order his release if they considered that no reasonable suspicion was shown in respect of the charges brought against him (see, for an example of a similar situation in Croatia, *Merčep v. Croatia*, no. 12301/12, § 102, 26 April 2016) or if they considered that there were no risks justifying detention (see paragraphs 43 and 54 to 56 above).

120. The case material demonstrates that the domestic courts, which had before them considerable evidence in support of the suspicion against the applicant, did exercise this power of control in his case (see paragraphs 14, 15, 18, 19, 25 and 26 above), as they had done in some other terrorism and national security-related cases (see examples of the domestic courts' decisions in paragraphs 54 to 56 above).

121. The Court reiterates that in some instances concerning particularly serious crimes, the nature and gravity of the charges against a defendant is a factor weighing heavily against his or her release and in favour of remanding him or her in custody (see *Merčep*, cited above, § 96, with further references). The generally formulated risk flowing from the organised nature of the criminal activities of which the applicant is accused has been accepted as the basis for his or her detention, in particular at the initial stages of the proceedings (see *Dudek v. Poland*, no. 633/03, § 36, 4 May 2006).

122. In *Khodorkovskiy v. Russia* (no. 5829/04, § 196, 31 May 2011) the Court remarked that, even though that situation had not arisen in that case, in some circumstances, for example where the suspect allegedly belonged to a gang implicated in violent crimes, or, probably, in terrorist cases, the "unavailability of bail" could be self-evident (citing *Galuashvili v. Georgia*, no. 40008/04, §§ 6 et seq., 17 July 2008; *Kusyk v. Poland*, no. 7347/02, § 37, 24 October 2006; and *Celejewski v. Poland*, no. 17584/04, §§ 35-37, 4 May 2006).

123. The Court considers that this was the situation in the applicant's case. The unavailability of release was self-evident, given the specific circumstances of the applicant's case. He was suspected of organising and leading a terrorist group composed of several individuals, one of whom had already absconded by the time the applicant was arrested. The group used sophisticated undercover

operations techniques and was engaged in a highly dangerous activity, an activity which was allegedly ongoing at the time the arrest was made.

124. In this context the Court must stress that the authorities were under a duty to protect the rights of the actual and potential victims of violent attacks under Articles 2, 3 and 5 § 1 of the Convention. The Court considers that, in circumstances such as those in the applicant's case, it must interpret the scope of the authorities' obligations under Article 5 § 3 to provide reasons for their decisions in a manner consistent with the practical requirements of discharging that duty (see, in the context of Article 6, *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 252 and 259, 13 September 2016).

125. Moreover, his case was examined against the background of great tensions in Odessa at the relevant time and the fleeing of defendants in other previous high-profile cases (see paragraphs 7 to 10 and 58 above).

126. It is also of key relevance that the District Court, which had full jurisdiction in that respect, found, in proceedings which raised no other issue of compliance with Article 5 § 3, that the evidence supported a reasonable suspicion against the applicant on those specific charges and that there was a risk of him absconding if released. Those findings were reviewed and upheld on appeal. Given the material before the Court, there is no reason to doubt the well-founded nature of the domestic courts' findings in that respect.

127. It is true that the reasons in the District Court's initial detention order were stated in a succinct fashion, given that the danger of the applicant absconding was evident. However, the court's succinct reasoning cannot alone amount to a violation of Article 5 § 3 (see, for example, *Van der Tang v. Spain*, 13 July 1995, § 60, Series A no. 321). Moreover, the degree of specificity of the domestic courts' reasons evolved over time: on 8 April 2016, in upholding the order extending the applicant's detention, the Court of Appeal referred to his specific role in the organisation of clandestine activities as grounds for believing that he presented a flight risk (see paragraph 35 above). The Court observes that it has not been suggested that the authorities failed to display "special diligence" in the conduct of the proceedings

128. Lastly, and most importantly, the decision of 20 October 2015 was not based on the Bail Exclusion Clause, although it contained a reference to the latter, but as explained above was the result of a balanced assessment which took into account the seriousness of the crime of which the applicant was suspected and the risk posed by release.

129. In view of the above-mentioned circumstances, the Court considers that the domestic courts gave "relevant" reasons for his detention which were "sufficient" under the circumstances to meet the minimum standard of Article 5 § 3 of the Convention.

130. The Court finds, therefore, that, in the particular circumstances of the present case, there has been no violation of Article 5 § 3 of the Convention.

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

131. The applicant complained of a violation of Article 6 § 2 of the Convention on account of the language used by the District Court in its initial pre-trial detention order. Article 6 § 2 of the Convention reads:

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

A. Admissibility

132. 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.

B. Merits

*1. The parties' submissions*

(a) The applicant

133. The applicant submitted that the District Court had stated, in its pre-trial detention order, that he "had committed a particularly grave offence" (see paragraph 26 above) and thus had affirmed his guilt in the absence of a conviction. That statement had been phrased as a statement of fact, expressed without any qualification or reservation. By making it, the District Court had taken the side of the prosecution, thus prejudging the outcome of the proceedings against him. The statement could only have conveyed to the reader that he was in fact guilty. Even though he had raised this matter on appeal, the Court of Appeal had not commented on it.

134. That latter fact was of critical importance. The applicant considered that a similar situation had occurred in *Fedorenko v. Russia*, (no. 39602/05, §§ 89-93, 20 September 2011), where the Court of Appeal had failed to correct the first-instance court, which had stated in a detention order that the applicant "had committed a serious criminal offence", dismissing it as a mere "technical error". In that case the Court had found a violation of Article 6 § 2.

(b) The Government

135. The Government submitted that what was important in the application of Article 6 § 2 was the true meaning of statements and not their literal form. The District Court, in its decision of 20 October 2015, had made it clear that the applicant was merely suspected by the authorities of a terrorist attack. While the literal expression used by the District Court "had committed a particularly grave offence" might seem to be in breach of the principle of the presumption of innocence, its context had to be taken into account. It had been used in the context of considering whether the applicant's detention had to be ordered, and it had been essential in that context to examine whether there was a reasonable suspicion against the applicant. That was precisely what the judge had intended to say in the order, and this had been explained in the Court of Appeal's decision of 28 October 2015. Moreover, the relevant court order had not been made available to the public.

*2. The Court's assessment*

(a) Relevant general principles

136. The Court reiterates that the principle of the presumption of innocence under Article 6 § 2 will be violated if a judicial decision or, indeed, a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before his guilt has been proved under the law. It suffices, in the absence of a formal finding, that there is some reasoning suggesting that the court or the official in question regards the accused as guilty, and a premature expression of such an opinion by the tribunal itself will inevitably run foul of the principle (see *Ramkovski v. the former Yugoslav Republic of Macedonia*, no. 33566/11, § 81, 8 February 2018, with further references). However, a distinction should be made between statements which reflect the opinion that the person concerned is guilty and statements which merely describe "a state of suspicion". The former infringe

the presumption of innocence, whereas the latter have been regarded as unobjectionable in various situations examined by the Court.

137. The Court has previously held that the statements in question must be read as a whole and in their proper context (ibid., § 82). When regard is had to the nature and context of the particular proceedings, even the use of some unfortunate language may not be decisive. The Court's case-law provides some examples of instances where no violation of Article 6 § 2 was found even though the language used by domestic authorities and courts had been criticised (see *Allen v. the United Kingdom* [GC], no. 25424/09, § 126, ECHR 2013, citing, in the latter respect, *Reeves v. Norway* (dec.), no. 4248/02, 8 July 2004, and *A.L. v. Germany*, no. 72758/01, §§ 38-39, 28 April 2005).

(b) Application of the above principles to the present case

138. The Court has found violations of Article 6 § 2 in many cases where the domestic courts, in pre-trial detention decisions, stated in an unqualified way that the applicant had committed an offence (see, for example, *Matijašević v. Serbia*, no. 23037/04, §§ 47-51, ECHR 2006-X; *Garycki v. Poland*, no. 14348/02, §§ 13, 71-73, 6 February 2007; *Nešťák v. Slovakia*, no. 65559/01, §§ 89-91, 27 February 2007; *Fedorenko*, cited above, §§ 90-93; *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 202-204, ECHR 2013 (extracts); and *Mugoša v. Montenegro*, no. 76522/12, §§ 68 and 69, 21 June 2016).

139. The pre-trial detention order contained references to the suspicion against the applicant and, indeed, the District Court's role in the proceedings was first of all to verify whether there was a reasonable suspicion against the applicant, as submitted by the investigating authority. However, the part of the pre-trial detention order where the expression in question was used was not dedicated to a description of the investigating authority's submissions or a discussion of the presence or otherwise of a reasonable suspicion.

140. Rather, the expression was used in the context of examining whether there were circumstances justifying the applicant's detention: a risk of him absconding, interfering with the investigation or continuing criminal activities. By the time the District Court turned to those matters, it had already summarised the investigating authority's submissions and had found it established that there was a reasonable suspicion against the applicant.

141. The Court does not perceive any reason for the District Court then to return to the matter again just to repeat, as the Government suggested (see paragraph 135 above), that it considered that there was a reasonable suspicion against the applicant. Moreover, under domestic law, persistence of a reasonable suspicion and existence of certain risks justifying detention, such as the risk of absconding, are two distinct matters. The District Court clearly used the expression in the latter, not the former, context.

142. The District Court appears to have used the expression not to proclaim the applicant guilty as such but to justify its decision to place him in pre-trial detention. However, as the above-mentioned case-law indicates, this alone does not rule out a finding of a violation since the Court has repeatedly found violations of Article 6 § 2 on account of an unqualified declaration of guilt in a pre-trial detention order.

143. The circumstances of the present case should be distinguished from cases where the courts stated that the applicants had "committed" certain acts classified in some way under domestic law merely to say that they considered that the applicants met certain legal criteria for a measure to be

applied to them, such as extradition (see *Gaforov v. Russia* (no. 25404/09, §§ 212-16, 21 October 2010) or pre-trial detention (see *Lada v. Ukraine* ([CTE], no. 32392/07, §§ 17, 18 and 51, 6 February 2018). By contrast, in the present case the District Court, by the time it used the offending expression, had already disposed with the question, indeed a relevant one under domestic law (see paragraphs 48 above) of whether the applicant fell into a category of defendants, which, because of the particular gravity of the charges against them, qualified for pre-trial detention (see the relevant provision of the domestic law in paragraph 42 above).

144. Lastly, it cannot be said that the District Court referred to the particular characteristics of the charges against the applicant, such as the organised nature or sophistication of the alleged criminal activity (contrast *Perica Oreb v. Croatia*, no. 20824/09, §§ 29 and 142, 31 October 2013, and *Ramkovski*, cited above, §§ 18, 83 and 84) or its particularly gruesome nature, exceeding the "basic" features of the offence in question (contrast *Karan v. Croatia* (dec.), no. 21139/05, 7 December 2006), as a basis for the court's opinion that the pre-trial detention was justified. The District Court's statement was devoid of any of those redeeming features, as it referred not to the particular characteristics of the offence the applicant was suspected of but to the applicant having "committed it".

145. In such circumstances, the Court is unable to read the statement in question other than as an expression of the District Court's opinion that the applicant was indeed guilty of the particularly grave offence of which he had been merely suspected, and not convicted, at the time.

146. The Court is prepared to entertain the possibility that the District Court may have merely committed a technical error in poorly wording its decision. However, neither the District Court, Court of Appeal nor any other domestic authority acknowledged that any such error had been committed or attempted to correct it (see, *mutatis mutandis*, *Matijašević*, § 47, and *Mugoša*, § 68, and contrast *Fedorenko*, § 91, and *Lada*, §§ 18 and 51, all cited above).

147. There has, accordingly, been a violation of Article 6 § 2 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

148. 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

149. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

150. The Government, reiterating their submissions that there had been no violations of the applicant's rights, considered the claim unjustified and, in any event, excessive.

151. The Court considers that, in the circumstances of the present case, the finding of violations constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.

B. Default interest

152. 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. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the delay in the drawing up of the arrest report;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's arrest without a prior court decision;
4. *Holds* that there is no need to examine the complaint under Article 5 § 1 of the Convention concerning the wording of the arrest report;
5. *Holds* that there has been no violation of Article 5 § 2 of the Convention;
6. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
7. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
8. *Holds* that the finding of violations constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar
SíofraO'Leary
President