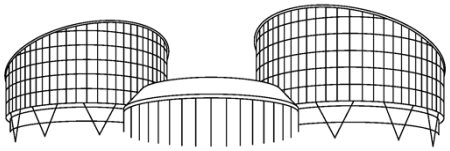

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ALEKSANDROVSKAYA v. UKRAINE

(Application no. 38718/16)

JUDGMENT

STRASBOURG

25 March 2021

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Aleksandrovskaya v. Ukraine,

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

Stéphanie Mourou-Vikström, *President,*
Ganna Yudkivska,
Lado Chanturia, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application 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, Ms Alla Aleksandrovna Aleksandrovskaya ("the applicant"), on 6 July 2016;

the decisions to give notice to the Ukrainian Government ("the Government") of the applicant's complaints: under Article 3 of the Convention concerning medical assistance in detention and access to it during the house arrest, and conditions of her participation in court hearings; under Article 5 §§ 1-5 concerning her arrest and continued detention; under Article 8 concerning her visiting rights; under Article 13 related to her complaints under Article 3 about medical assistance in detention and participation in court hearings; and under Article 14, taken together with Article 5 § 3, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 4 March 2021,

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

INTRODUCTION

1. The case concerns the applicant's complaints: under Article 3 of the Convention that she was placed in metal cages during court hearings; under Article 5 § 1 (c) that her arrest was unlawful; and under Article 5 § 3 that her continued detention was unjustified. She also raised other complaints.

THE FACTS

2. The applicant was born in 1948 and lives in Kharkiv. She was represented by Mr M. Tarakhkalo, Ms O. Chilutyan, Ms O. Protsenko (lawyers practising in Kyiv) and Mr O. Shadrin (a lawyer practising in Kharkiv).

3. The Government were represented by their Agent, Mr I. Lishchyna.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. The applicant is a former member of parliament and politician.

6. On 27 June 2016 the Security Service applied to the Kyivskyy District Court of Kharkiv ("the Kyivskyy Court") for a warrant to search the applicant's flat. The Kyivskyy Court issued the warrant on 28 June 2016, and on the same day Security Service investigators conducted a search of the applicant's flat. During the search they seized her passport and electronic and storage devices. After the search they arrested her.

7. The arrest report stated that the applicant had been arrested under Article 208 § 1 (2) of the Code of Criminal Procedure ("the CCP", see paragraph 58 below) on charges of attacking the territorial integrity of Ukraine and bribery (Articles 110 § 2 and 369 § 3 of the Criminal Code, see paragraphs 53 and 54 below). According to the report, on 24 June 2016 the applicant, acting through R. and G., had given B. – the mayor of Pivdenne – 1,000 United States dollars (USD) for his assistance with the Pivdenne Town Council's adoption of decisions concerning local elections. After those decisions had been adopted, the applicant had given USD 8,000 to R. (through S.), to be given to B. The plan had been to publish the decisions on the Internet on 28 June 2016, in order to make a number of people more inclined to organise a local referendum with the aim of proclaiming the Kharkiv Region independent. In the report, the applicant stated that there were no grounds for her arrest under Article 208 § 1 (2) of the CCP, and that it was in breach of Article 5 of the Convention.

8. On 29 June 2016 the investigator lodged an application with the Kyivskyy Court for the applicant's continued detention. He reiterated the facts stated in the arrest report, and further stated that the reasonable suspicion against the applicant was confirmed by a number of pieces of evidence: the record of the inspection of the crime scene, transcripts of interviews with the witnesses R. and S., a transcript of an interview with the suspect G., and so on (the parties did not provide copies of those documents). With reference to Article 177 § 1 (1), (3) and (4) of the CCP (see paragraph 56 below), the investigator also stated that if the preventive measure of continued detention was not adopted, the applicant might abscond, unlawfully influence witnesses or other suspects, or otherwise obstruct the criminal proceedings. Lastly, he stated that under Article 176 § 5 of the CCP (see paragraph 55 below), non-custodial measures could not be applied in her case.

9. The applicant's lawyers objected, stating that her arrest had been unlawful, and that the investigator had not proved the risks provided for by Article 177 of the CCP and formally referred to Article 176 § 5 of the CCP. However, the applicant had no intention of absconding. Referring to Article 178 of the CCP (see paragraph 57 below), they further submitted that in choosing a preventive measure, the court should take the following factors

into account: the suspicion against the applicant was groundless; she had strong social ties in her place of residence, an excellent reputation and no criminal records; she suffered from chronic diseases; the alleged offences had caused no pecuniary damage; and four persons were willing to act as sureties for her as provided for by Article 176 § 1 of the CCP (see paragraph 55 below).

10. On 29 and 30 June 2016 the court examined the investigator's application and allowed it on the latter date, ordering the applicant's detention until 26 August 2016. It stated that the evidence submitted demonstrated that there was a reasonable suspicion against her and that the risks under Article 177 § 1 (1), (3) and (4) of the CCP had been established. The severity of the sentence which the applicant faced, in combination with the information about her, the fact that she did not admit her guilt, and the possibility that she might influence witnesses and obstruct the criminal proceedings by informing other possible perpetrators about the investigation, rebutted her arguments that there had been no such risks. The court also stated that it had examined the possibility of applying non-custodial preventive measures, but pursuant to Article 176 § 5 of the CCP, to which it referred twice, such measures could not be applied in respect of one of the crimes which the applicant was charged with (Article 110 § 2 of the Criminal Code). Taking into account the existing risks and the available evidence indicating that the applicant had committed serious crimes, the application of less restrictive measures was not therefore possible. The court did not examine the applicant's lawyers' complaint of the unlawfulness of her arrest, holding that it was to be examined by the prosecutor.

11. On 5 July 2016 the applicant's lawyers appealed against the ruling of 30 June 2016, stating that the court had not substantiated the risks under Article 177 of the CCP, and had only formally referred to them. No such risks were present: the applicant was of an advanced age and had health issues; she had a permanent place of residence, an occupation, an excellent reputation and positive character references; she had no criminal records; and she had been a member of parliament. The court had ignored the fact that several persons were willing to act as her sureties. Lastly, the lawyers submitted that Article 176 § 5 of the CCP precluded the court from taking into account the requirements of Articles 177 and 178.

12. On 22 July 2016 the Kharkiv Regional Court of Appeal ("the Court of Appeal") upheld the ruling of 30 June 2016. It further added that the applicant's son lived in Russia and maintained relations with her, that she had managerial skills, a certain reputation and was popular in the Kharkiv Region, and that she had been a member of parliament and the regional secretary of the Communist Party; those circumstances were sufficient to make one believe that, if at large, she might abscond, influence witnesses or otherwise obstruct the proceedings. Lastly, the court twice referred to

Article 176 § 5 of the CCP: as an independent ground precluding the application of non-custodial measures, and taken together with other considerations. It thus concluded that the reasonable suspicion against the applicant, the existence of risks and Article 176 § 5 of the CCP excluded the application of non-custodial measures in respect of her.

13. On 3 August 2016 the applicant asked the Kyivskyy Court to change her detention to house arrest, stating that the risks under Article 177 of the CCP had reduced because her state of health excluded her absconding, most of the witnesses had already been questioned, and she could not obstruct the proceedings by disclosing information, as she had not been allowed to acquaint herself with the investigation material. On 5 August 2016 the court rejected the application, in particular because the applicant's lawyers had not proved that the risks under Article 177 of the CCP had reduced.

14. Following the investigator's applications of 26 August, 9 and 27 September 2016 similar to the one he had made on 29 June 2016, the Kyivskyy Court extended the applicant's detention. It held that the investigation had not yet been completed and a number of investigative actions still had to be taken. It further held that the investigator had not proved the risks under Article 177 § 1 (4) of the CCP. Otherwise, its reasoning was largely the same as that in the decisions of 30 June and 22 July 2016 (the existence of reasonable suspicion, the severity of the possible sentence, and the presence of other risks under Article 177 § 1). In each of its decisions the court referred to Article 176 § 5 of the CCP on two or three occasions, either as an independent ground precluding the application of non-custodial measures, or taken together with other considerations.

15. The applicant's lawyers appealed, stating that: there was no reasonable suspicion against her; the risks under Article 177 of the CCP had considerably reduced or ceased to exist (most of the witnesses had already been questioned, some suspects had been served with notices of suspicion, and others were on a wanted list, so the applicant could not influence them, and her health condition excluded her absconding); any remaining insignificant risks could be prevented by non-custodial measures; and the court had not taken into account her health, personality, age, positive character references, sureties and lack of a criminal record. They further submitted that Article 176 § 5 of the CCP was in breach of Article 5 of the Convention.

16. On 5 and 22 September 2016 respectively the Court of Appeal essentially rejected the appeals against the rulings of 26 August and 9 September 2016. It held that the seriousness of the applicant's offences and the severity of the possible sentence indicated that she might abscond or influence witnesses or other suspects. It further referred to the circumstances mentioned in its ruling of 22 July 2016 and to Article 176 § 5

of the CCP, as an independent ground excluding the application of non-custodial measures, and taken together with other considerations.

17. However, on 13 October 2016 the Court of Appeal allowed the appeals against the ruling of 27 September 2016, ordered the applicant's release and placed her under twenty-four-hour house arrest until 23 October 2016, obliging her not to leave her flat without permission from the investigator, the prosecutor or the investigating judge. It held that the investigator had not provided grounds for the applicant's continued detention other than those made in his previous applications, or evidence indicating that the risk that she might abscond or influence witnesses or other suspects still existed. The lower court had also failed to give a detailed analysis of those risks. Thus, the fact that the applicant had a certain reputation and was popular in the Kharkiv Region, and had been a member of parliament and a party secretary, spoke to the strength of her social ties and the fact that those risks had reduced. Furthermore, the lower court had confined itself to a formal enumeration of the legal grounds for continued detention, without evaluating them in their totality in the applicant's individual circumstances. Thus, the seriousness of the offences could not be the only reason for keeping her detained. She had positive character references from her place of residence, awards from Parliament and several sureties; she also had strong relations with her sons' families and participated in raising her grandsons. That meant that she had a stable social status, which considerably reduced the risks which had been repeatedly referred to before. The Court of Appeal thus concluded that her continued detention was in breach of Article 5 of the Convention, taking into account: her age, her poor health, her strong social ties, her permanent place of residence, the large amount of confidence which the local population had in her, her positive character references, her employment experience, the seriousness of the alleged offences, the lack of any improper procedural conduct on her part or a criminal record, and the investigator's failure to prove that the alleged risks still existed.

18. On 20 October 2016 the Kyivskyy Court extended the applicant's house arrest until 21 December 2016. On the latter date the court extended her house arrest until 21 February 2017, limiting it to a period going from 9 p.m. to 6 a.m. On 21 February 2017 that measure expired.

19. The parties did not inform the Court about subsequent events.

II. CONDITIONS OF THE APPLICANT'S PARTICIPATION IN COURT HEARINGS

20. The applicant stated that during the court hearings held between 29 June and 22 September 2016 she had been held in metal cages and guarded by convoy officers. As the case had been highlighted by the media, she had been exposed to the public. During the hearing of 29 June 2016

(see paragraph 8 above) her lawyers had requested her release from the cage in which she had been placed. The court had released her only during the hearing of 30 June 2016, in the afternoon. During the hearings of 29 and 30 June 2016 she had remained in a courtroom with poor ventilation and air conditioning, and had been exposed to high temperatures.

21. In a letter of 3 March 2017 sent to the Government the Kyivskyy Court stated that: during the hearing of 29 June 2019 it had examined another application by the applicant's lawyer, and the examination of that application had not involved the examination of any other applications (such as the one for the applicant's release from the cage); neither the applicant nor her lawyers had asked the court to release her from the cage during the hearing of 26 August 2016 (see paragraph 14 above); the applicant's lawyers had asked the court to release her during the hearing of 9 September 2016 (see paragraph 14 above), but pursuant to the 2015 Instruction on Escorting Accused or Convicted Persons ("the 2015 Instruction"), a person could be released from a metal cage only where his or her preventive measure was changed to a non-custodial one (placement in a metal cage having been a transitional measure provided for until metal cages were replaced by glass cabins).

22. The applicant further stated that during the hearing of 12 July 2016 (see paragraph 31 below) she had been held in a metal cage, and that handcuffs had been used on her when she had been escorted to the courtroom. In a letter of 6 March 2017 sent to the Government the Zhovtnevyy District Court of Kharkiv ("the Zhovtnevyy Court") stated that the applicant had been placed in a metal cage because at that time there had been no glass cabins. Also, she had made no applications in that regard. In a letter of 6 March 2017 the police informed the Government that handcuffs had not been used on the applicant, and moreover she had made no complaints.

23. During a hearing of 15 July 2016 the applicant's lawyers asked the Court of Appeal to release her from the metal cage in which she had been placed. According to the audio-recordings of the hearing, the judge asked the head of the convoy service whether it was possible to do this. With reference to the 2015 Instruction, the head of the service responded in the negative, and the judge rejected the application. In a letter of 6 March 2017 the Court of Appeal informed the Government that during the hearings of 22 July and 5 and 22 September 2016 (see paragraphs 12 and 16 above) the applicant had not made any relevant complaints.

III. MEDICAL ASSISTANCE PROVIDED TO THE APPLICANT DURING HER DETENTION, AND HER ACCESS TO IT DURING HOUSE ARREST

24. On the night of 29 June 2016 the applicant stayed in the city hospital, suffering from a hypertensive crisis. She was examined by various doctors, had X-ray, ultrasound and electrocardiographic examinations, and was diagnosed with numerous diseases (ischemic heart disease, diffuse cardiosclerosis, arrhythmia, stage II hypertension, stage II-A cardiac insufficiency, a duodenal ulcer in remission, autoimmune thyroiditis, hypothyreosis and varicose veins) from which she had already been suffering for several years (together with some other diseases, such as stable angina, not diagnosed at the hospital on that day).

25. During the hearing of 30 June 2016 (see paragraph 8 above) the applicant was examined by a private cardiologist, Dr N., who diagnosed her with most of the above diseases. She noted that there was a very high risk of complications from those diseases, and prescribed medical examinations (brain imaging, ultrasound and X-ray examinations, several blood and hormone tests, a coronary angiogram (the angiogram to be conducted "on a non-urgent basis") and twenty-four-hour electrocardiogram and blood pressure monitoring) and medication; she also recommended a diet ("the conclusions of 30 June 2016").

26. On the same day the applicant was transferred to a SIZO, where she was examined by a doctor who noted that her condition was satisfactory and that she was not expressing any complaints.

27. From 30 June to 2 July 2016 the applicant received inpatient treatment in the SIZO medical unit. She underwent blood and urine tests, which detected no pathology, and received medication. On 2 July 2016 she was discharged from the medical unit upon making a request in which she stated that she did not require further inpatient treatment.

28. According to a document issued by Dr S., the head of the SIZO medical unit, out of the recommendations made in Dr N.'s conclusions of 30 June 2016, only blood and urine tests and an X-ray examination could be carried out in the SIZO. There was also an electrocardiograph. The X-ray examination had already been carried out in the hospital and showed no pathology. The recommended diet mainly excluded fatty and spicy foods, which the meals in the SIZO did not contain. However, the parcels which the applicant had received from her relatives had contained products not recommended by that diet (meat, smoked bacon and sausage) and cigarettes. As indicated by letters from the State Prisons Service dated 14 July and 22 September 2016 and other documents in the case file, during her detention in the SIZO the applicant was provided with some of the prescribed medication, and she received other medication from her sister-in-law, Ms B.

29. On 7 July 2016 the applicant and her lawyer asked the SIZO governor if she could have a full medical examination, owing to a deterioration in her health. The governor replied that measures would be taken in order to carry out the examination.

30. On 8 July 2016 the applicant was examined by a cardiologist, a neuropathologist, a vascular surgeon, a gastroenterologist, an ophthalmologist and an endocrinologist from the hospital. She was diagnosed with most of the above-mentioned diseases and prescribed necessary medication, which she started taking from 9 July 2016 onwards, and a diet was recommended.

31. Following an application by the applicant's lawyer, on 12 July 2016 the Zhovtnevyy Court obliged the SIZO governor to arrange for the applicant to have medical examinations without delay, in accordance with Dr N.'s conclusions of 30 June 2016.

32. On 14 July 2016 the applicant had the relevant medical examinations in hospital: brain imaging; ultrasound examinations of her heart, thyroid gland, abdominal organs and neck vessels; an X-ray examination; heart rhythm analysis; and blood and hormone tests. She refused to have an endoscopy. She was examined by a cardiologist, a neuropathologist, a general practitioner and an endocrinologist, and was prescribed medication. It was established: that her state of health was stable and satisfactory and there were no signs of deterioration; that she did not require hospitalisation or urgent care; that the prescribed medication was enough to ensure her medical care at that stage; and that no other measures had been recommended. Treatment with medication was possible in the SIZO and did not require special conditions.

33. On 14, 21 and 27 July and 1 August 2016 the applicant was examined by the SIZO doctor, who recommended that she continue taking the prescribed medication.

34. On 3 August 2016 Dr N. examined the applicant's medical documents and concluded that her diseases, combined with psychological pressure, high temperatures, physical exertion and bad nutrition, could cause sudden complications which, in the absence of urgent medical care, might lead to death. She also considered that quality diagnostics and intensive care were not possible in the SIZO in the event of complications.

35. During the court hearing of 5 August 2016 (see paragraph 13 above) the applicant was again examined by Dr N., who noted a visible deterioration in her health compared with what she had observed on 30 June 2016: increased symptoms of cardiac insufficiency (stage II-B) and cerebral circulation insufficiency, haemodynamic instability, symptoms of myocardial ischemia, and a significant increase in the number of extra systoles and episodes of atrial fibrillation. Dr N. stated that the applicant needed to be hospitalised for further examination in a specialised medical facility, as her state of health required dynamic monitoring by a

cardiologist. She was prescribed examinations (twenty-four-hour electrocardiogram and blood pressure monitoring, an X-ray examination, coronaroventriculography, blood tests and a biopsy of the thyroid) and medication, to be conducted and administered without delay ("the conclusions of 5 August 2016").

36. On 8 August 2016 the SIZO medical unit received Dr N.'s conclusions of 5 August 2016; a SIZO doctor examined the applicant and confirmed that the medication prescribed to her in those conclusions was correct. On 12 and 17 August 2016 the doctor examined her again and confirmed that the prescribed medication was correct.

37. On 19 August 2016 the applicant asked the SIZO governor to arrange for her to have a consultation with a cardiologist. According to her, there was no reply. According to the information provided to the Government by Dr S., the applicant was free to choose a doctor, but did so only during the court hearings; she never asked the SIZO to allow her a visit from a doctor of her choice. Although there was no cardiologist in the SIZO, the applicant was regularly monitored by the SIZO doctors, and by hospital cardiologists during her medical examinations and inpatient treatment.

38. On 22 August the applicant was examined by a SIZO doctor, and thereafter she received inpatient treatment in the hospital from 22 to 25 August 2016. According to the medical documents, her condition on arrival was moderately grave. She was diagnosed with the same diseases (including stage II hypertension (high risk) and stage II-B cardiac insufficiency with cardiac asthma attacks) and stage II obesity. She was taken for blood and urine tests, had an X-ray and electrocardiography, and received medication, following which her condition improved. The applicant was released from hospital under the care of a general practitioner and a cardiologist; it was recommended that she continue to take the medication which had been prescribed earlier.

39. On 25 August 2016 experts D., Ch. and O. examined the applicant's medical documents and concluded that she suffered from ischemic heart disease, stable angina, cardiosclerosis, stage I-II hypertension, arrhythmia, stage II-B cardiac insufficiency with cardiac asthma attacks, and a duodenal ulcer in remission.

40. On 26 August 2016 the applicant returned to the SIZO, where she was examined by a SIZO doctor who confirmed that the medication prescribed to her in the hospital was correct. He further examined the applicant on 31 August and 6, 12 and 16 September 2016, produced electrocardiograms (on 6 and 12 September) which did not reveal any acute heart pathology, and recommended that the applicant continue with the same treatment that she had been receiving.

41. During the hearing of 9 September 2016 (see paragraph 14 above) Dr N. examined the applicant again and concluded that her condition was

moderately grave and that she needed urgent hospitalisation for dynamic monitoring and emergency care to avoid fatal or incapacitating complications ("the conclusions of 9 September 2016"). She was also prescribed medication, some of which she was already taking. According to the applicant, it was not possible for her to have dynamic monitoring and emergency care in the SIZO. According to the information provided to the Government by Dr S., the applicant's dynamic monitoring was ensured by the SIZO doctors, who examined her on a number of occasions on their own initiative.

42. On 19 September 2016 the applicant was examined by a hospital cardiologist and underwent electrocardiography. The diagnosis given was the same as before. According to Dr S., the examination demonstrated that the applicant's condition was stable at that moment.

43. On 4 October 2016 the SIZO governor informed the applicant's lawyer that in urgent situations patients could be sent to specialised medical facilities.

44. On 12 October 2016 the applicant was examined by a SIZO doctor, who withheld one of the drugs which had been prescribed to her earlier.

45. Following her release from detention, on 18 October 2016 the applicant's lawyer asked the hospital to provide information on whether she needed further inpatient treatment and, if so, how long such treatment would last. On 21 October 2016 the hospital replied saying that an answer could be given only after the applicant had been seen by doctors.

46. In the ruling of 20 October 2016 (see paragraph 18 above) the Kyivskyy Court held that the applicant's twenty-four-hour house arrest did not preclude her attending medical facilities with the permission of the investigator, prosecutor or court. In upholding that ruling, on 27 October 2016 the Court of Appeal held that the prosecutor had given his mobile telephone number to the applicant, who could warn him any time if she needed to visit pharmacies, medical facilities and so on, and that there would be no obstacles in this regard. Moreover, the applicant had not provided evidence showing that the authorities had refused to allow her to visit medical facilities or had placed obstacles in her way. Nor had she provided any information indicating that she needed to visit those facilities regularly or at a certain time of the day. Therefore, house arrest was compatible with her state of health.

47. According to letters from the police and the prosecutor's office dated 10 March 2017, while the applicant was under house arrest neither the police nor the prosecutors received any requests from her to visit medical facilities, or any complaints in this regard.

IV. VISITS TO THE APPLICANT DURING HER DETENTION

48. On 7 July 2016 Ms B. asked the investigator to allow her to visit the applicant.

49. On 8 July 2016 the investigator replied that, as indicated by the case material, the applicant was complaining of poor health. A query had therefore been sent to the SIZO about the possibility of arranging such visits. The question of giving Ms B. permission to visit the applicant would therefore be resolved once the reply from the SIZO had been received.

50. On 1 August 2016 the applicant complained to the Zhovtnevyy Court that the investigator was impeding her right to receive visits from Ms B. The complaint was returned unexamined, owing to the court's lack of jurisdiction.

51. On the same day, having received a positive reply from the SIZO on 25 July 2016, the investigator allowed the applicant to receive two visits: one from Ms B. and one from Ms A. (another relative). According to letters from the Security Service and the Department of the State Penal Service dated 9 and 10 March 2017, the investigator subsequently allowed all visit requests. During her detention in the SIZO the applicant received one visit from Ms B. (on 17 August 2016) and visits from other relatives (on 10 and 18 August and 29 September 2016); the applicant was never refused a visit.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE 1996 CONSTITUTION

52. Article 29 provides, *inter alia*, that no one can be held in custody other than pursuant to a reasoned court decision, and only on the grounds of and in accordance with a procedure established by law.

II. THE 2001 CRIMINAL CODE

53. Article 110 § 2 provides that deliberate acts aimed at changing the State territory or borders, public calls to commit such acts, or the dissemination of material containing such calls, when committed by a group of persons, are punishable by five to ten years' imprisonment, with or without confiscation of property.

54. Article 369 § 3 provides that a proposal or promise to an official of an improper advantage, as well as giving such an advantage for the official's actions or failure to act using his or her official position, in the interest of a person who proposes, promises or gives such an advantage, if committed by a group of persons, is punishable by four to eight years' imprisonment, with or without confiscation of property.

III. THE 2012 CODE OF CRIMINAL PROCEDURE

55. Article 176 § 1 provides for the following preventive measures: a personal undertaking by a defendant, a third party acting as a surety, bail, house arrest and pre-trial detention.

Article 176 § 5, introduced on 7 October 2014, provides that the preventive measures of a personal undertaking, a surety, house arrest and bail may not be imposed on people who are suspected of or charged with certain crimes related to terrorism and national security (the latter category including crimes under Article 110 of the Criminal Code).

56. 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: (1) absconding from the investigating authorities and/or the court; (2) destroying, concealing or spoiling any of the items or documents that are of essential importance for establishing the circumstances of the criminal offence; (3) exerting unlawful influence on the victim, witnesses, other suspects, the accused or an expert; (4) obstructing the criminal proceedings in any other way; (5) committing another offence or continuing the offence of which he or she is suspected or accused.

57. Article 178 provides that, when deciding on a preventive measure, the court, in addition to considering the risks under Article 177, must assess the totality of the circumstances on the basis of the material presented by the parties, including: (i) the weight of the evidence against the defendant; (ii) the severity of the sentence faced in the event of conviction; (iii) the defendant's age and state of health; (iv) the strength of the defendant's social connections in his place of permanent residence, including any family and dependants; (v) whether the defendant has stable employment or is pursuing studies; (vi) the defendant's reputation; (vii) the defendant's assets; (viii) whether the defendant has a criminal record; (ix) the defendant's compliance with previously imposed preventive measures; (x) any concurrent charges against the defendant; and (xi) pecuniary damage caused by the suspected offence or gain from the suspected offence, and the strength of the evidence demonstrating such circumstances.

58. Article 208 § 1 provides that a competent official can arrest an individual in the absence of a decision by an investigating judge or court if that individual is suspected of a crime punishable by imprisonment and: (1) the individual was caught while committing a crime or attempting to commit it; or (2) immediately after the commission of a crime an eyewitness (including a victim) or the totality of obvious signs on a body, on clothes or at the scene of the event indicates that that individual has just committed a crime.

IV. THE 2019 DECISION OF THE CONSTITUTIONAL COURT

59. On 25 June 2019 the Constitutional Court declared Article 176 § 5 of the CCP unconstitutional on the grounds that: (i) it prevented the courts from issuing duly reasoned decisions concerning detention; (ii) it had removed their right to apply non-custodial measures; (iii) Article 29 of the Constitution required a reasoned court decision as grounds for detention, which reduced the risk of arbitrariness which would exist if detention was based merely on the gravity of an offence, in the absence of an examination of the specific circumstances of the case; and (iv) the provision allowed for detention on the basis of formalistic court decisions, based purely on the formal classification of an 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.

THE LAW

I. SCOPE OF THE CASE

60. Following the Government being given notice of the case, the applicant raised a new complaint under Article 13 of the Convention of the lack of effective domestic remedies for her complaint under Article 3 concerning her access to medical assistance while under house arrest.

61. The Court notes that the applicant did not raise that complaint in her application form. In its view, the new complaint is not an elaboration of her original complaints on which the parties have commented. It therefore considers that it is not appropriate to take this matter up in the context of the present case (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

62. The applicant complained: (i) that she had not been provided with adequate medical assistance in detention; (ii) that she had not had access to adequate medical assistance while under house arrest; (iii) that she had been detained in metal cages during the court hearings between 29 June and 22 September 2016; and (iv) that she had been handcuffed when being escorted to a courtroom on 12 July 2016. She relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

1. Medical assistance in detention

63. The applicant submitted that at the time of her arrest she had been suffering from a number of chronic diseases. Her condition had required specialised medical supervision and further examination. However, she had been unable to receive treatment in the SIZO at the level recommended by Dr N. Thus, recommendations made in Dr N.'s conclusions of 30 June 2016 could be complied with in the SIZO only in respect of blood and urine tests and an X-ray examination, while other examinations had not been available; she had had those other examinations in hospital, but not until 14 July 2016. Furthermore, in accordance with Dr N.'s conclusions of 5 August 2016, she had required dynamic monitoring by a cardiologist. However, there had been no cardiologist in the SIZO, and it would have been impossible for her to receive urgent care in the event of a heart attack. Also, she had taken medication without medical supervision. Moreover, the SIZO had not provided her with all medication; instead, she had received it from Ms B. She had been deprived of the opportunity to receive visits from Dr N. Her state of health had deteriorated as a result, and she was still receiving medical treatment.

64. The Government submitted that the applicant had been under the constant supervision of the SIZO medical staff and had been provided with regular and timely medical examinations and treatment. Moreover, she had been regularly examined by specialist doctors from the hospital. Furthermore, the applicant's own behaviour had had an adverse effect on her treatment during detention: she had received from her relatives some foods which were not on her diet and cigarettes. As to Dr N.'s conclusions, they had been made during brief examinations of the applicant at several court hearings. They were no substitute for the in-depth examinations carried out by the SIZO and hospital doctors. In any event, Dr N.'s conclusions of 30 June and 5 August 2016, which had been made available to the SIZO authorities on 1 July and 8 August 2016 respectively, had been taken into account in determining the applicant's treatment, especially as they had not really differed from those made by the SIZO and hospital doctors. The applicant had therefore been provided with prompt and adequate medical care in detention.

2. Access to medical assistance during house arrest

65. The applicant submitted that while she had been under house arrest she had been under the control of the law-enforcement authorities, and a decision on her access to medical assistance had depended on them. That had made her access to hospitalisation impossible, as she had not been able to leave the house without the authorities' permission. Even though she had

usually been allowed to visit the hospital during the day, the investigators had refused to allow her to stay there for round-the-clock monitoring. It had therefore been impossible for her to have an examination by means of a Holter device. Also, according to Dr N.'s conclusions of 9 September 2016 (see paragraph 41 above), she had required urgent hospitalisation, but she had been totally dependent on the investigator's will, and had been afraid that her house arrest could be changed. The medical care that she had required had been related to specific procedures comprising examinations lasting longer than twenty-four hours, the use of static equipment and the involvement of medical staff, procedures which had been impossible to carry out at home. Moreover, the police could take up to twelve hours to examine a request to leave the house (see paragraph 66 below), which was too long in urgent cases.

66. The Government submitted that while she had been under house arrest the applicant had been entitled to receive medical assistance without any restrictions, including medical examinations, inpatient and outpatient treatment in hospitals, and visits from doctors if necessary. Although, under the 2016 instructions on house arrest, she had been obliged to inform the police about her intention to leave the house in the event of sickness, and the police would then check the relevant information within twelve hours and send it to the investigator or court, she had not made any relevant requests. Moreover, on 21 December 2016 the court had changed the conditions of her house arrest, which had simplified her access to medical assistance.

3. Conditions of the applicant's participation in court hearings

67. The applicant submitted that the domestic law did not provide for people being released from metal cages in courtrooms, and that the granting of her application on 30 June 2016 had been an isolated case and not established practice. The courts had never assessed whether her physical restraint during the hearings had been necessary, and had given no reasons for holding her in cages. However, given her state of health, holding her in metal cages had added to her psychological suffering and mental anguish. Moreover, she had been a political figure whose reputation had seriously suffered. As the case had been highlighted by media, she had also been exposed to the public in general. Her placement in a metal cage could have made people think that an extremely dangerous criminal was being tried, and would also have conveyed a negative image of her to the judges examining her case. Furthermore, there had been no need to place her in a metal cage, as she had had no criminal record and there had been no evidence that she might resort to violence. Her age and health would have prevented her from doing so or from escaping from the court. As to the alleged use of handcuffs on her on 12 July 2016, the applicant stated generally that that had been in breach of Article 3 of the Convention.

68. With regard to the applicant's placement in metal cages during court hearings, the Government submitted that that had been provided for by domestic law. However, on 30 June 2016 she had been released from one of those cages following an application by her lawyers. Despite that decision, no similar applications had been made during other hearings. Therefore, she could not contend that lodging such an application had been an ineffective remedy, and she had not exhausted the domestic remedies. As to the alleged use of handcuffs on 12 July 2016, the Government submitted, with reference to the letter of 6 March 2017 (see paragraph 22 above), that no handcuffs had been used; moreover, the applicant had not made a complaint in that regard.

B. The Court's assessment

1. Admissibility

69. The Court notes that the applicant's complaints about medical assistance in detention, access to that assistance during house arrest and about being held in metal cages during the court hearings are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. Furthermore, as regards the Government's non-exhaustion argument in respect of the applicant's complaint about being held in metal cages, the Court considers that it is closely linked to the merits of that complaint and thus joins it to the merits. The above complaints must therefore be declared admissible.

70. However, as regards the applicant's complaint that handcuffs were used on her on 12 July 2016, the Court notes that this complaint is general and not supported by any further details or evidence. Furthermore, according to the letter of 6 March 2017, handcuffs were not used and the applicant did not make a complaint in that regard at domestic level.

71. This complaint is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Merits

(a) Medical assistance in detention

72. The Court reiterates that Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance. The relevant principles were summarised in the case of *Blokhin v. Russia* ([GC], no. 47152/06, §§ 136-38, 23 March 2016).

73. Turning to the present case, the Court notes that before being placed in detention the applicant suffered from a number of chronic diseases which warranted medical care. It further notes that the core of the applicant's

complaint is that, while in detention, she was not provided with treatment recommended by Dr N. on 30 June, 5 August and 9 September 2016 (see paragraphs 25, 35 and 41). In this regard, the Court notes that there were certain delays in the implementation of some of those recommendations, and that not all of them were implemented during the applicant's detention.

74. Thus, the full medical examination of the applicant which had been recommended on 30 June 2016 was conducted two weeks later, on 14 July 2016 (see paragraph 32 above). However, it established that her state of health was stable and satisfactory at that time, and that further treatment was possible in the SIZO and did not require special conditions. It does not therefore appear that the above delay put the applicant's health at risk (see, *mutatis mutandis*, *Kavkazskiy v. Russia*, no. 19327/13, § 53, 28 November 2017).

75. The Court next notes that it appears that some of Dr N.'s recommendations were not implemented during the applicant's detention, notably: twenty-four-hour electrocardiogram and blood pressure monitoring, a coronary angiogram (or coronaroventriculography) and a biopsy of the thyroid (the conclusions of 30 June and 5 August 2016); and hospitalisation for dynamic monitoring and the provision of emergency care (the conclusions of 9 September 2016). However, the Court also notes that those recommendations made in the first two sets of Dr N.'s conclusions were not repeated in the third set of conclusions (see, similarly, *Litvinov v. Russia*, no. 32863/13, § 92, 22 March 2016). Moreover, none of the above-mentioned recommendations were confirmed by the SIZO or hospital doctors. Apart from the hospital examination on 14 July 2016, the applicant received inpatient treatment in the hospital from 22 to 25 August 2016, following which the doctors concluded that her condition had improved. She was thus discharged under the follow-up care of a general practitioner and a cardiologist, and it was recommended that she continue to take the medication which had been prescribed earlier (see paragraph 38 above).

76. Moreover, the Court does not overlook the fact that Dr N. met the applicant only three times and gave her conclusions after examinations during the court hearings of 30 June, 5 August and 9 September 2016. It agrees with the Government that those examinations – which were apparently brief, involved limited medical equipment and were not performed in special conditions – were no substitute for the examinations carried out by the SIZO doctors who monitored the applicant's condition on a regular basis (from 30 June to 2 July, on 14, 21 and 27 July, on 5, 8, 12, 17, 22, 26 and 31 August, on 6, 12 and 16 September, and on 12 October 2016) and the in-depth examinations performed by specialist hospital doctors during her treatment (on 8 and 14 July, from 22 to 25 August and on 19 September 2016). Dr N. was not the applicant's attending doctor and she never visited her in the SIZO or in the hospital, even though apparently she

was not prevented from doing so. Nor does it appear that the applicant requested such visits or that they were denied (see paragraph 37 above). In the Court's view, Dr N. could not therefore possess the same level of knowledge about the applicant's health as the SIZO and hospital doctors (see *Khalvash v. Russia*, no. 32917/13, § 62, 15 December 2015). They were thus best placed to determine her treatment, and there is no evidence or argument that they acted in bad faith (see, *mutatis mutandis*, *Guk v. Ukraine* [Committee], no. 16995/05, § 72, 8 December 2016; *Komarov v. Ukraine* [Committee], no. 4772/06, § 117, 19 January 2017; and *Sadkov v. Ukraine*, no. 21987/05, § 85, 6 July 2017).

(b) 77. Lastly, the Court attaches particular weight to the fact that, apart from stating generally that after her release from detention she had continued to receive unspecified treatment (which appears to be an obvious fact, given her chronic diseases), the applicant did not update the Court about her state of health and apparently did not seek the implementation of any measures following her release, including those measures recommended by Dr N. but not implemented during detention (see, *mutatis mutandis*, *Gavula v. Ukraine*, no. 52652/07, § 64, 16 May 2013). Although she complained that she had had no access to medical assistance between 13 October 2016 and 21 February 2017 while she had been under house arrest (see paragraph 65 above), the Court finds no violation of Article 3 of the Convention in respect of that complaint (see paragraphs Access to medical assistance during house arrest

82-85 below). Nor did the applicant inform the Court about any measures implemented after 21 February 2017. This undermines the applicant's claim that she was seriously concerned that not all of Dr N.'s recommendations were implemented during detention, and that those recommendations were particularly urgent (see, *mutatis mutandis*, *Golubenko v. Ukraine* (dec.), no. 36327/06, § 96, 5 November 2013, and *Krivolapov v. Ukraine*, no. 5406/07, § 78, 2 October 2018). Indeed, such measures might have confirmed the medical necessity and urgency of those recommendations and shown whether the strategy chosen by the SIZO and the hospital doctors in respect of the applicant's treatment should have been corrected, and whether she should have been given any treatment or medication other than that which she had been receiving in detention. Without that information from the applicant, it is impossible to assess whether there have been any adverse consequences for her health as a result of the authorities' failure to implement some of the recommendations made by Dr N. (see, *mutatis mutandis*, *Nagorskiy v. Ukraine* (dec.), no. 37794/14, § 54, 12 January 2016).

78. It is true that, according to the medical documents, the applicant's state of health deteriorated during her detention (notably, her cardiac insufficiency increased from stage II-A to stage II-B; see also paragraphs 35, 38 and 39 above). However, this is not in itself an indication that this happened owing to the allegedly insufficient or inadequate medical assistance which the applicant received in detention. Given the chronic

nature of the applicant's diseases and the lack of sufficient information from her as to how and how often the diseases manifested themselves before her detention, and how they were treated, it is difficult to establish to what extent that deterioration resulted from the alleged inadequacy of the medical assistance which she received in detention, as such a deterioration may well have been part of the natural course of her medical conditions or due to inevitable negative factors inherent in detention, including stress (see *Rudenko v. Ukraine* [Committee], no. 5797/05, § 94, 25 November 2010; *Litvinov v. Russia*, cited above, § 93; and *Komarov v. Ukraine* [Committee], no. 4772/06, § 116, 19 January 2017). Lastly, the Court notes that despite her cardiovascular issues and the diet which had been recommended to her, during her detention the applicant received from her relatives cigarettes and certain foods which were not recommended.

79. It is also true that the SIZO medical unit did not have a cardiologist or special medical equipment (other than the electrocardiograph). However, Article 3 of the Convention cannot be interpreted as ensuring that every detainee should receive medical care at the same level as that offered "in the best civilian clinics" (see *Mirilashivili v. Russia* (dec.), no. 6293/04, 10 July 2007). Moreover, the applicant was regularly examined by cardiologists from the hospital, and underwent complex medical examinations and inpatient and outpatient treatment there. She was prescribed the necessary medication, which was adjusted where necessary, and was not prevented from receiving visits from doctors of her choice, although she did not request such visits. As to the lack of medication in the SIZO, the Court notes that the applicant did not complain that the need to buy it had placed a heavy financial burden on her or her relatives (see *Breslavskaya v. Ukraine* (dec.), no. 29964/10, 31 January 2012). Nor did she refer to any specific occasion when she had been in need of medical assistance but had not received any.

80. Overall, the Court considers that during her relatively short period of detention the applicant was regularly monitored by SIZO and hospital doctors who made efforts to address her health issues. It cannot therefore be concluded that the medical assistance and treatment provided to her were inadequate or insufficient.

81. Accordingly, there has been no violation of Article 3 on this account.

(c) Access to medical assistance during house arrest

82. The Court notes that, contrary to the applicant's submissions that the investigators refused to allow her to be hospitalised, there is no evidence that she sought the authorities' permission for such hospitalisation while she was under house arrest. Indeed, according to the letters of 10 March 2017, the police and the prosecutor did not receive any relevant requests or complaints from her (see paragraph 47 above). The applicant has not provided any evidence to show that this was not the case – that she

requested such hospitalisation and her requests were refused. Nor has she provided any information indicating that she required urgent care while she was under house arrest or asked the authorities to allow hospitalisation but had her request refused, or that hospitalisation was delayed because of the 2016 instructions on house arrest.

83. The Court also observes that on 27 October 2016 the Court of Appeal noted that the prosecutor had given his telephone number to the applicant so that she could warn him any time if she needed to visit a pharmacy or medical facilities, so that there would be no obstacles in that regard. The court also noted that the applicant had not provided it with any information to indicate that the investigator or the prosecutor had refused to allow her to visit those facilities, or any information showing that she needed to visit such facilities regularly or at a certain time (see paragraph 46 above). The applicant did not deny that.

84. Lastly, although the applicant alleged that certain medical procedures, notably Holter monitoring, had not been possible because they could be carried out only when a person was hospitalised, the Court notes that, according to publicly available information[1], Holter monitoring does not usually involve hospitalisation; it can be conducted at home and usually requires two visits to a doctor – one to attach the device and then one to remove it. However, the applicant did not provide any evidence indicating that she had wished to have Holter monitoring either in the hospital or at home, or that she had sought the relevant permission but had been refused. Nor does it appear from her submissions that any doctors visited her at home while she was under house arrest, which further undermines her complaint.

85. In view of the above, the Court cannot conclude that the applicant did not have access to medical assistance while she was under house arrest. Accordingly, there has been no violation of Article 3 on this account.

(d) Holding the applicant in metal cages

86. The Court observes that holding defendants in metal cages during court hearings was standard procedure in Ukraine (see *Titarenko v. Ukraine*, no. 31720/02, § 41, 20 September 2012, and *Korban v. Ukraine*, no. 26744/16, § 132, 4 July 2019). This practice was also applied in the applicant's case.

87. Thus, although on one occasion (30 June 2016) the Kyivskyy Court allowed an application by the applicant's lawyers and released the applicant from the metal cage, at other hearings (including those in the same court) she remained in such a cage. It is true that, as indicated by the case file (see paragraphs 21-23 above), the applicant and her lawyers did not lodge

[1] See, for instance, https://www.healthline.com/health/holter-monitor-24h and http://www.nmc.in.ua/ru/service/holter (last visited on 18 December 2020)

applications for her to be released from the cage she was in at each hearing. However, the Court considers that lodging such an application would have had no prospect of success in any event, given that, under domestic law, courts were obliged to hold defendants in metal cages during hearings (until those cages were replaced by glass cabins), and no alternatives were available. Indeed, the Kyivskyy Court, the Zhovtnevyy Court and the Court of Appeal referred, either expressly or in substance, to the 2015 Instruction which barred them from releasing the applicant from the metal cages (see paragraphs 21-23 above). The Court therefore agrees with the applicant that her release on that one occasion was not provided for by domestic law and could not be regarded as established practice, and dismisses the Government's non-exhaustion argument (see paragraph 68 above).

88. The Court further notes that the domestic courts never assessed whether there were any security risks in the courtroom which required that the applicant, who was also guarded by convoy officers, be held in a metal cage. Nor did the Government provide any evidence indicating that there had been any such risk. Moreover, as a public figure, the applicant was shown behind metal bars to not only the participants in the hearings, but also a much wider audience, owing to the media coverage (see *Korban*, cited above, § 133).

89. The Court has held that holding a person in a metal cage during a trial constitutes in itself an affront to human dignity in breach of Article 3 (see *Svinarenko and Slyadnev v. Russia* ([GC], nos. 32541/08 and 43441/08, § 138, ECHR 2014 (extracts)). That remains pertinent in the present case.

90. There has accordingly been a breach of Article 3 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

91. The applicant also complained under Article 5 § 1 (c) of the Convention that her arrest on 28 June 2016 had been unlawful, and under Article 5 § 3 that her continued detention between 30 June and 13 October 2016 had not been justified. The above provisions, in so far as relevant, read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other

officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. The applicant's arrest on 28 June 2016

1. The parties' submissions

92. The applicant submitted that her arrest had been in the absence of a court decision and had not been justified under Article 208 § 1 (2) of the CCP. It had thus been contrary to domestic law. Although they had had information about the crime allegedly committed by her on 24 June 2016, the investigators had not asked the court to authorise her arrest and had only asked to search her flat. During the search they had seized various items whose contents they had not checked. They had not found any financial means or documents, and had not therefore discovered anything to prove her guilt. Despite that, they had arrested her under Article 208 § 1 (2). However, her flat could obviously not be regarded as a crime scene under that provision; her arrest had not taken place immediately after the commission of the alleged crime, and nothing on her body, clothes or in her flat, including the items seized, had indicated that she could have committed a crime. While referring to the above provision, the arrest report had not contained any reference to the factual basis justifying the measure, or any explanation or circumstance to show its legality. The Kyivskyy Court had disregarded her complaint in this regard. The evidence referred to by the Government (see paragraph 93 below) had not exempted the investigators from obtaining a judicial warrant for her arrest. At the time of her arrest that evidence had not been submitted to the court.

93. The Government submitted that the investigators had had sufficient grounds to arrest the applicant in the absence of a court decision. At the moment of her arrest her involvement in the crimes in question had been confirmed by a number of documents: a covert-surveillance record documenting her leading role in the alleged crimes; an inspection record in respect of the money given to R. by S. upon her instructions; an inspection record in respect of the crime scene which documented the first time when money received from her had been handed over; an examination record in respect of internet sources; the record of G.'s questioning; the record of R.'s questioning; an application by S.; and so on (no copies of the above documents were provided). The applicant had therefore been arrested on reasonable suspicion of having committed a crime.

2. The Court's assessment

(a) Admissibility

94. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

95. Like any deprivation of liberty under Article 5 § 1 of the Convention, an arrest under sub-paragraph (c) must be "lawful" and "in accordance with a procedure prescribed by law". Those two expressions refer essentially to domestic law and lay down the obligation to comply with its substantive and procedural rules (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 186, 28 November 2017). The issue before the Court is therefore whether the applicant's arrest was lawful in domestic terms.

96. The Court notes that under the domestic law, deprivation of liberty in the absence of a court decision is possible only in a limited number of situations. Thus, under Article 208 § 1 (2) of the CCP, referred to in the applicant's arrest report, an investigator can arrest a person if that person has been pointed out by eyewitnesses or victims, or has clear traces of a crime on his person or on his clothing immediately after the offence (see paragraph 58 above).

97. In this regard, the Court notes that the applicant was arrested on 28 June 2016 for a crime which, according to the arrest record, she had committed on 24 June 2016. Prior to her arrest, on 27 June 2016 the investigators had applied to the court for a warrant to search her flat, and on 28 June 2016 they had obtained such a warrant. It does appear from the parties' submissions that the items seized during the search served as justification for the applicant's arrest, under Article 208 § 1 (2) of the CCP. It does not therefore appear that at the moment of her arrest the investigators were treating the situation as one which was taking place "immediately after the offence" (as required by the above provision) and was thus preventing them from applying for judicial authorisation of the arrest in the same way that they had applied for authorisation of the search the day before it had taken place. Indeed, the reference to Article 208 § 1 (2) in the arrest report was followed by the presentation of the alleged facts. However, it did not contain any information required by this provision. In the Court's view, without that information, the arrest report did not constitute a meaningful guarantee showing that the applicant's arrest had been effected on the basis of a reasonable suspicion that she had committed a crime (see *Grinenko v. Ukraine*, no. 33627/06, § 83, 15 November 2012; *Malyk v. Ukraine*, no. 37198/10, § 27, 29 January 2015; and *Kotiy v. Ukraine*, no. 28718/09, § 45, 5 March 2015). Lastly, the Court notes that the applicant complained about her arrest before the Kyivskyy Court, but the court did not examine

that issue and instead referred it to the prosecutors (see paragraph 10 above). In the absence of clear information about why the application of the relevant provision was necessary, the Court considers that the applicant's arrest was not compatible with Article 5 § 1 (c) of the Convention.

98. There has therefore been a violation of the above provision.

B. The applicant's continued detention

1. The parties' submissions

(a) The applicant

99. The applicant submitted that in the decision of 30 June 2016 ordering her detention the Kyivskyy Court had simply reiterated the risks mentioned in Article 177 of the CCP and stated that their existence had been proved, without giving any further explanation. It had also noted that she had not admitted her guilt, even though the purpose of detention was not to make somebody admit his guilt. The only issue analysed had been the seriousness of both the alleged offence and the relevant sentence, but that could not in itself justify the detention. The court had not analysed the arguments which she had put forward: that she had never been convicted of anything; that she had no intention to abscond; that she had a stable lifestyle, place of residence and work, strong social ties, a spotless reputation, positive character references, and sureties; that she was of an advanced age with health issues; and that her alleged actions had caused no pecuniary damage. In upholding the decision of 30 June 2016, the Court of Appeal had stated that her son lived in Russia and they maintained relations, that she had managerial skills and a certain reputation in the region, and that she had been a member of parliament and a party official. However, all that information had characterised her in a mostly positive manner. The fact that her son lived abroad could not prove her intention to abscond, as she had a stable lifestyle in Kharkiv.

100. The court decisions extending the applicant's detention quasi-automatically had contained the same grounds and wording. The grounds provided in them had been neither relevant nor sufficient. The courts had made general and abstract arguments without referring to specific facts and circumstances; they had not analysed whether the declared risks had persisted over time, and had disregarded the facts in favour of the applicant's release (her character, morals, occupation, assets, family ties, links with Ukraine, diligent procedural conduct, and the fact that the alleged crimes were non-violent and she did not pose a danger to society). Nor could the complexity of the investigation, which had been protracted owing to various defects on the part of the investigators, justify her continued detention.

101. The applicant emphasised that each decision had referred to Article 176 § 5 of the CCP barring courts from applying non-custodial measures. That provision, which had eventually been declared unconstitutional, had represented a system of mandatory detention, rendered any judicial control over pre-trial detention void, and precluded the courts from taking into account the individual circumstances of each case. By relying on it, and by failing to address the applicant's circumstances, the courts had failed to give reasoned decisions on her continued detention. Nevertheless, on 13 October 2016 the Court of Appeal had changed the preventive measure in respect of her to house arrest, thus disregarding that provision as if it had not existed. The courts had thus acted inconsistently, as they had initially relied on that provision as the main reason for her detention, but had eventually disregarded it.

(b) The Government

102. The Government submitted that in deciding on the applicant's detention, the Kyivskyy Court had thoroughly analysed all risks and circumstances set out in Articles 177 and 178 of the CCP and had noted that she was suspected of a serious crime and, if at large, could abscond or influence witnesses or other suspects. It had taken into account all the evidence submitted by the investigators. Also, in the decision of 27 September 2016 (see paragraph 14 above) it had considered other circumstances, including the applicant's reputation, political background and the fact that her son lived in Russia, which increased the risk of her absconding. The reasons provided by the domestic courts had therefore been relevant and sufficient.

103. In addition, the courts had thoroughly examined the possibility of applying non-custodial measures. However, Article 176 § 5 of the CCP had prohibited them from applying such measures in respect of persons accused of crimes against national security. In the applicant's case, although the Kyivskyy Court had taken that provision into account, it had not accepted it as a basis for its decisions. It had analysed all the risks under Article 177, examined the possibility of applying non-custodial measures and given its decisions on the basis of that analysis. The Court of Appeal had upheld those decisions (apart from in its decision of 13 October 2016).

2. The Court's assessment

(a) Admissibility

104. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Merits

105. Under Article 5 § 3, justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities. The requirement for a 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. Furthermore, when deciding whether a person should be released or detained, the authorities must consider alternative measures. Justifications which have been deemed "relevant" and "sufficient" have included the danger of absconding, the risk of pressure on witnesses or of evidence being tampered with, the risks of collusion, reoffending or causing public disorder and the need to protect the detainee (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 87, 88 and 102, ECHR 2016 (extracts)). Those risks must be duly substantiated and the authorities' reasoning on those points cannot be abstract, general or stereotyped (see *Merabishvili*, cited above, § 222). Thus, the risk of absconding cannot be gauged solely on the basis of the severity of the possible sentence; it must be assessed with reference to other factors, such as the accused's character, morals, assets, links with the jurisdiction, and international contacts (ibid., § 223). It is essentially on the basis of the reasons set out in the domestic judicial decisions and of the arguments made by the applicant in his or her requests for release or appeals that the Court is called upon to decide whether or not there has been a breach of Article 5 § 3 (ibid., § 225).

106. Turning to the present case, the Court notes at the outset that, as explained in *Grubnyk v. Ukraine* (no. 58444/15, §§ 119 and 120, 17 September 2020), Article 176 § 5 of the CCP did not deprive the domestic courts of the power to release a defendant where they considered that the prosecution had failed to prove that the defendant presented a risk of absconding or that there were other risks which could justify detention. This is also confirmed by the present case: when ordering the applicant's continued detention, the domestic courts did not consider it sufficient to limit their assessment to reference to Article 176 § 5. On the contrary, they attempted to provide reasons for their decisions by reference to other factors (see paragraphs 10, 12, 14 and 16 above). Lastly, on 13 October 2016 (see paragraph 17 above) the Court of Appeal ordered the applicant's release without even mentioning Article 176 § 5, even though she remained charged with an offence covered by that provision (see also *Avraimov v. Ukraine* [Committee], no. 71818/17, § 61, 23 March 2021).

107. That said, the Court notes that the Constitutional Court held that Article 176 § 5 had the potential to distort the domestic courts' decision-making process and lead them to issue insufficiently reasoned decisions (see paragraph 59 above, and *Grubnyk*, cited above, § 117). Accordingly, it will examine whether the courts' reasoning was distorted by the above provision so that they failed to give "relevant and sufficient"

reasons for their decisions in the present case (see also *Avraimov*, cited above, § 63).

108. The Court notes that in its initial detention order of 30 June 2016 the Kyivskyy Court referred to: risks under Article 177 § 1 (1), (3) and (4) of the CCP which, it stated generally, "had been established"; the severity of the sentence which the applicant faced; "information about her"; and the fact that she had not admitted her guilt (see paragraph 10 above). However, its general reference to Article 177 was not supported by any specific fact or element. Thus, the severity of the relevant sentence alone could not justify the applicant's continued detention (see *Idalov v. Russia* [GC], no. 5826/03, § 145, 22 May 2012). As to the argument that she did not admit her guilt, it ran counter to freedom from self-incrimination and the presumption of innocence, and was not therefore relevant (see *Lutsenko v. Ukraine*, no. 6492/11, § 72, 3 July 2012). Nor did the court explain which "information" about the applicant it took into account.

109. In upholding the above decision of 30 June 2016, on 22 July 2016 the Court of Appeal added that the applicant's son lived in Russia and maintained relations with her, that she had managerial skills, a certain reputation and was popular in the Kharkiv Region, and that she had previously been a member of parliament and a party official (see paragraph 12 above). Those circumstances were sufficient for it to believe that, if at large, the applicant might abscond, influence witnesses or otherwise obstruct the proceedings. It did not explain why it considered that the mere fact that the applicant's son lived in Russia and that she maintained relations with him presented a risk of her absconding, especially given the applicant's submissions that she was a lady of advanced age with health issues, and that she had a permanent place of residence in Kharkiv and an occupation, a spotless reputation, positive character references and so on. Nor did the court explain how the applicant's managerial skills increased the alleged risks. As to the remaining elements mentioned by the Court of Appeal, the Court notes that on 13 October 2016 the same court held that the fact that the applicant had a certain reputation and was popular in the Kharkiv Region, and had been a member of parliament and a party official, spoke to the strength of her social ties and the fact that the alleged risks had reduced (see paragraph 17 above). Given that those factors were eventually disregarded in the process of establishing the alleged risks, the Court fails to see how they had been relevant in establishing such risks a few months earlier.

110. In their further decisions extending the applicant's detention, the courts largely referred to the same grounds as those in the decisions of 30 June and 22 July 2016, notably the severity of the charges against her and the risk of her absconding or influencing witnesses, without providing any new details or grounds (see paragraphs 10, 12, 14 and 16 above). Furthermore, in its decision of 5 August 2016 the Kyivskyy Court held that

there were no grounds for changing the preventive measure in respect of the applicant, as her defence team had not proved that the alleged risks had reduced (see paragraph 13 above). However, Article 5 § 3 of the Convention implies an opposite approach: it is for the national authorities to indicate grounds for a person's continuing detention (see *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8).

111. In addition, there is no indication that the domestic courts duly examined alternative measures. Even though they stated generally that they had examined such a possibility, they did not elaborate on why none of those measures could be applied, apart from referring to Article 176 § 5 of the CCP. Nor did they – until the applicant's release – analyse her repeated references to the fact that several persons were willing to be her sureties.

112. The Court lastly notes that in the majority of their decisions the courts referred to Article 176 § 5 twice or even three times. In its view, the courts' repeated references to that provision cannot but reinforce the conclusion that it distorted their decision-making process, and that their resulting decisions were not based on "relevant and sufficient" reasons.

113. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

114. The applicant also complained under Article 8 of the Convention that she had been denied visits from Ms B. The above provision reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

115. The applicant submitted that she had not been allowed to receive visits from Ms B. "until the middle of August 2016". She further submitted that under domestic law, the exercise of the right to family visits depended on the investigator's or the court's discretion. In her opinion, the investigator's response of 8 July 2016 (see paragraph 49 above) had been uncertain; it had not been clear about how visits from Ms B. might affect her health. With reference to *Shalimov v. Ukraine* (no. 20808/02, § 88, 4 March 2010), the applicant further submitted that the relevant domestic law contained no safeguards against arbitrariness or abuse. Ms B.'s visits would not have entailed any risk of disorder or other negative consequences.

On the contrary, they would have had only a positive impact on the applicant's health and psychological well-being.

116. The Government noted that on 7 July 2016 Ms B. had asked the investigator to allow her to visit the applicant. On the next day the investigator had sent a query to the SIZO, and after he had received a positive reply, on 1 August 2016 he had allowed Ms B. to visit the applicant. With reference to the letters of 9 and 10 March 2017 (see paragraph 51 above), the Government also noted that all further visit requests made by the applicant's relatives had also been allowed. On no occasion during her detention had the applicant been refused visits.

B. The Court's assessment

117. The Court notes that, unlike in *Shalimov* (cited above, § 88; see also *Titarenko*, cited above, § 102), in the present case the applicant was not denied family visits. Although she alleged that she had not been allowed to receive visits from Ms B. until the middle of August 2016, the Court notes that on 8 July 2016 the investigator did not reject Ms B.'s request of 7 July 2016, but stated that the question of visits to the applicant would be resolved once a reply had been received from the SIZO (see paragraph 49 above). Indeed, after receiving a positive reply from the SIZO on 25 July 2016, on 1 August 2016 he allowed the request (see paragraph 51 above).

118. Although it took three and a half weeks to decide on Ms B.'s request, this was due to the fact that the investigator firstly had to receive information from the SIZO. Taking into account the circumstances of the present case, the Court does not consider that his decision to wait for such information was arbitrary or manifestly unreasonable. Nor did the applicant claim that, in doing so, the investigator had acted in bad faith or had intended to deny her visits, or that the period of time which he had taken to consider Ms B.'s request had had any negative consequences for her. In relation to this last point, the Court also notes that even though the applicant was in the SIZO from 30 June 2016 onwards, Ms B. did not ask the investigator to allow her to visit the applicant until 7 July 2016. Furthermore, although the investigator allowed the request on 1 August 2016, Ms B. did not visit the applicant until 17 August 2016. Lastly, the Court notes that, apart from that single visit, apparently Ms B. did not request any further visits (see paragraph 51 above).

119. In sum, Ms B.'s request to visit the applicant was neither refused nor left unanswered (see also *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, § 175, 3 December 2015). Although it took the authorities some time to decide on the request, the applicant has not demonstrated that that had any negative consequences for her Article 8 rights. Therefore, her complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

120. The applicant further complained under Article 13 of the Convention that she had not had effective remedies for her complaint under Article 3 concerning the medical assistance provided to her in detention. Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

121. The Government contested that complaint.

122. The Court notes that it has found no violation of Article 3 in respect of the applicant's above complaint (see paragraphs 72-81 above). Her complaint under Article 13 is therefore not arguable, and must also be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

123. In her initial submissions, the applicant complained under Article 3 of the Convention that during the hearings of 29 and 30 June 2016 she had been exposed to high temperatures in courtrooms with poor ventilation and air-conditioning. She also complained under Article 5 §§ 3 and 4: that on 28 June 2016 she had not had access to a court for a review of the lawfulness of her arrest; that there had been no possibility to appeal in cassation against the decisions on her continued detention or appeal against an unspecified decision not to change her detention; that the decisions of 28 August, 9 and 27 September 2016 had not been reviewed speedily; and that the lawfulness of her detention for several hours on 9 September 2016 had not been examined by the courts. In addition, she complained under Article 13 in relation to her complaints under Article 3 that she had been exposed to high temperatures during the hearings of 29 and 30 June 2016 and had had handcuffs used on her on 12 July 2016.

124. However, the applicant did not pursue those complaints further, and made no submissions in that regard in her observations on the admissibility and merits of the case. In such circumstances, the Court concludes that there is no basis for pursuing those complaints (for a similar approach, see *Stryzh v. Ukraine* [Committee], no. 39071/08, §§ 30-32, 16 January 2020).

125. Lastly, the applicant complained under Article 5 §§ 3 to 5 of the Convention: that the courts had not reviewed the lawfulness of her arrest; that the decision of 30 June 2016 had not been reviewed speedily; and that no compensation had been available for the alleged breaches of her Article 5 rights. She also complained under Article 13 in relation to her complaint under Article 3 about being held in metal cages; and under Article 14, taken together with Article 5 § 3, that Article 176 § 5 of the CCP had been discriminatory.

126. Having regard to the facts of the case, the parties' submissions and its findings under Articles 3 and 5 of the Convention (see paragraphs 86-90, 95-98 and 105-113 above), the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to give a separate ruling on the admissibility and merits of the above-mentioned complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

127. 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

128. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage for the breaches of her rights under the Convention.

129. The Government considered the above claim exorbitant.

130. The Court awards the applicant EUR 15,600 under this head.

B. Costs and expenses

131. The applicant claimed 16,160[2] Ukrainian hryvnias (UAH) for legal services provided to her by Mr Shadrin at domestic level and at the initial stage of the proceedings before the Court, EUR 3,750 for legal services provided to her by Mr Tarakhkalo at the advanced stage of the proceedings before the Court (that amount to be transferred directly to that lawyer's bank account) and UAH 434.51[3] for correspondence with the Court. In support of her claims, she provided a contract for legal services concluded with Mr Shadrin, a time sheet showing that he had spent 98.3 hours on the case at domestic level and in the Court proceedings, at an hourly rate of EUR 150 (EUR 14,745 in total), and two bank receipts confirming that she had paid him UAH 16,160 under that contract; she also provided a contract for legal services concluded with Mr Tarakhkalo and a time sheet showing that he had spent twenty-five hours preparing her observations on the case, at an hourly rate of EUR 150. She also submitted postal receipts for the amount claimed in this regard.

132. The Government left the claim for postal expenses to the Court's discretion. As to the legal services provided by Mr Tarakhkalo, they

[2] Around EUR 548

[3] Around EUR 15

considered the claim excessive, as he had represented the applicant only at the advanced stage of the Court proceedings. As regards the legal services provided by Mr Shadrin, the Government considered that the claimed amount of EUR 14,745 was excessive, and moreover that most of his services had been provided at domestic level and the costs of those services should not be taken into account.

133. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and to its case-law, the Court notes that the applicant claimed UAH 16,160 (the equivalent of EUR 548) for legal services provided by Mr Shadrin (and not EUR 14,754 as submitted by the Government). It considers that claim reasonable, and allows it. It also considers it reasonable to award the applicant EUR 3,000 for her representation before the Court by Mr Tarakhkalo, this amount to be transferred directly to his bank account, and EUR 15 for her postal expenses incurred before the Court.

C. Default interest

134. 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* admissible the applicant's complaints under Article 3 of the Convention about the medical assistance provided to her in detention, access to that medical assistance while she was under house arrest and about being held in metal cages during court hearings, under Article 5 § 1 (c) about her arrest on 28 June 2016 and under Article 5 § 3 about her continued detention; *declares* inadmissible the complaints under Article 3 concerning the use of handcuffs on 12 July 2016, under Article 8 about visiting rights and under Article 13 relating to the complaint under Article 3 concerning the medical assistance in detention; and *decides* not to pursue the examination of the applicant's remaining complaints;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant being held in metal cages during court hearings and no violation of the above provision on account of the medical assistance provided to her in detention and access to that assistance while she was under house arrest;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's arrest on 28 June 2016;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the applicant's continued detention;

5. *Holds* that it is not necessary to examine the admissibility and merits of the applicant's complaints under Article 5 §§ 3 to 5 of the Convention that the courts refused to review the lawfulness of her arrest, that the decision 30 June 2016 was not reviewed speedily, and that no compensation was available for the alleged breaches of her Article 5 rights; under Article 13 relating to the complaint under Article 3 about being held in metal cages during court hearings; and under Article 14, taken together with Article 5 § 3;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 15,600 (fifteen thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,563 (three thousand five hundred and sixty-three euros), of which EUR 3,000 (three thousand euros) shall be transferred directly to Mr Tarakhkalo's bank account, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. {signature_p_2}

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President