



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

FIFTH SECTION

DECISION

Application no. 45849/20
Nataliya Oleksiyivna MYKYTAS
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 10 September 2026 as a Committee composed of:

Gilberto Felici, *President*,

Mykola Gnatovskyy,

Vahe Grigoryan, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application (no. 45849/20) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 28 September 2020 by a Ukrainian national, Ms Nataliya Oleksiyivna Mykytas (“the applicant”), who was born in 1979 and lives in Kyiv, and was represented by Mr A.G. Gabrielyan, a lawyer practising in Uzhhorod;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. After the applicant had posted bail for her husband, the domestic courts found that he had broken the obligation not to communicate with co-defendants in his criminal case and forfeited a part of the bail. The courts froze some funds in the applicant’s bank account to secure possible confiscation in the event that her husband was convicted. The applicant complained that those decisions had been in breach of Article 7 of the Convention and Article 1 of Protocol No. 1 thereto.

2. On 2 October 2019 the applicant’s husband (M.), who is a former member of the Parliament of Ukraine and president of a State-owned development company, was formally notified of suspicion within the framework of criminal proceedings concerning alleged embezzlement. According to the notice of suspicion, M., in collusion with the former head

of the National Guard and other officials, had organised a scheme to misappropriate State property.¹ As a result, the State allegedly lost about 80 million Ukrainian hryvnias (UAH).² The proceedings against M. received media coverage. According to the most recent available information they are still pending.

3. On 4 October 2019 the High Anti-Corruption Court (“the HAC”) set bail in respect of M. at UAH 5.5 million.

4. On 22 October 2019 the HAC’s Appeal Chamber (“the appeal Chamber”) allowed an appeal lodged by the prosecutor and increased the required bail to UAH 80 million.³ The court imposed on M. a number of obligations, including to appear when summoned and not to communicate with his co-defendants. The ruling reiterated the relevant law provision under which, in the event that he failed to comply with those obligations, bail could be forfeited.⁴ The ruling stated that the obligations imposed and the ruling would remain in force until 19 November 2019.⁵

5. The applicant paid bail for M., referring in the bank payment orders to the court’s rulings of 4 and 22 October 2019.

6. On 11 November 2019 the HAC extended the time-limit for the obligations imposed on M. until 11 January 2020. The ruling reiterated the relevant legislative provisions under which, in the event that those obligations were breached, a stricter preventive measure could be imposed and the defendant could be fined.⁶

7. On 3 April 2020 the HAC allowed the prosecutor’s application and, after a hearing with M., his lawyer and the applicant, ordered that the total amount of bail be forfeited, finding that M. had violated the obligations imposed on him, since he had repeatedly, notably during a meeting on 29 November 2019, communicated with and threatened his co-defendants.⁷

¹ At the relevant time, the charges against M. fell under Article 191 § 1 of the Criminal Code of Ukraine (large-scale embezzlement), which provides for confiscation of assets as a possible punishment.

² Equivalent to about 2.8 million euros (EUR) at the material time.

³ The court took into account the married couple’s self-declared financial situation (real estate, cash, securities holdings, vehicles and valuables, which they estimated amounted to the equivalent of more than EUR 13 million).

⁴ Article 182 § 8 of the Code of Criminal Procedure of Ukraine provides that if a suspect or an accused breaches the obligations imposed on him or her by a court in the course of the application of a preventive measure, the bail amount paid may be forfeited to the State.

⁵ “Встановити строк дії ухвали до 14.11.2019”.

⁶ Article 139 of the Code of Criminal Procedure provides that, in the event that a defendant or other parties do not appear, without a valid reason, when summoned, they may be subjected to fines ranging from a factor of 0.25 to 0.5 of subsistence levels (equivalent to UAH 2,007 in 2019) in respect of summons issued by an investigator or prosecutor and from a factor of 0.5 to 2 of subsistence levels in respect of court summons.

⁷ Article 182 § 8 of the Code of Criminal Procedure provides that if a suspect or an accused breaches the obligations imposed on him or her by a court in the course of the application of a preventive measure, the bail amount paid may be forfeited to the State.

8. The applicant appealed. She argued that she had not been informed of the possibility that bail could be forfeited. By the time M.'s meeting with his co-defendants occurred, the ruling of 22 October 2019 had already expired.

9. On 29 April 2020 the appeal Chamber held a hearing in the presence of the applicant, her lawyers, M. and his lawyer. The appeal Chamber decreased the forfeited amount to UAH 30 million, since M. had violated only one of the imposed obligations but not others (for example, the obligation not to abscond). The appeal Chamber found forfeiture to be lawful and proportionate. It found that the applicant had been duly notified of the consequences of any possible breach of obligations by M., those having been duly explained in the ruling setting bail, and the applicant had cited the details of that court ruling when making the bank payment. It was not disputed by the parties that she had been advised on those points by M. and his lawyer. The law was clear on the point that the bail was to be set without a specific end date and did not require a periodic ruling to extend it.

10. On 14 May 2020 the HAC replaced bail with house arrest and on 17 June 2020 returned the remainder of the bail, amounting to UAH 50 million, to the applicant's bank account.

11. On 25 June 2020 the HAC, on an application lodged by the prosecutor, imposed a freezing order for UAH 50 million in the applicant's bank account to secure the confiscation which might be imposed in the event of M.'s conviction. It stated that the funds in the account were to be considered joint marital property⁸ and, therefore, belonged in part to M.

12. The applicant appealed, arguing that the funds in the account belonged to her as her own property and were not joint marital property. She provided a copy of an agreement with M. (signed on 7 October 2019) dividing some of their joint marital assets, according to which the applicant had received, as separate property, UAH 5.5 million in the bank account (the one used for the payment of bail) and UAH 76.5 million in cash.⁹

13. On 28 July 2020 the appeal Chamber held a hearing with the applicant and her lawyer and decreased the frozen amount to UAH 25 million, stating that only that amount belonged to M. as his share in the marital property.¹⁰ The appeal Chamber pointed out that, even though the law allowed spouses to divide their joint property without terminating the marriage,¹¹ that had to be done in good faith and not with the purpose of frustrating enforcement

⁸ Under Article 60 of the Family Code of Ukraine.

⁹ Article 64 of the Family Code provides that spouses may enter into any lawful agreements concerning their separate private property and joint marital property.

¹⁰ The appeal chamber pointed out that, under Article 49 of the Criminal Enforcement Code of Ukraine, confiscation of assets was to be applied to the convicted person's personal property and his or her share in any joint property.

¹¹ Under Article 69 of the Family Code.

obligations against one of the spouses.¹² Referring to the timing of the agreement and its one-sided nature (which involved M.’s renunciation of a major part of his share in the marital property for no perceptible benefit),¹³ the appeal Chamber considered that the agreement constituted an abuse of rights for the purpose of shielding assets from seizure and confiscation.

THE COURT’S ASSESSMENT

A. Complaint under Article 7 of the Convention

14. The applicant complained that forfeiture of bail had been a criminal penalty imposed on her and that, even though she had not been charged with any offence, she had been held liable for a breach of obligations imposed on M., not on her.

15. The starting-point in any assessment of the existence of a penalty within the meaning of Article 7 of the Convention is whether the measure in question was imposed following conviction for a “criminal offence” (see *Illseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 203, 4 December 2018).

16. The Court observes that, as no criminal conviction was handed down against the applicant and as the forfeiture was aimed at ensuring her husband’s, not her own, conduct in criminal proceedings, the measure cannot be regarded as a “penalty” imposed on the applicant within the meaning of Article 7 of the Convention. In that regard, the measure should be contrasted with the one imposed in *Koval v. Ukraine* (no. 65550/01, §§ 104-06, 19 October 2006), which was directed at the criminal defendant himself.

17. Moreover, the forfeiture measure was not aimed at punishment, but rather at ensuring the proper conduct of criminal proceedings against M. (see *Lavrechov v. the Czech Republic*, no. 57404/08, § 46, ECHR 2013, and *Alperin v. Ukraine*, no. 41028/20, § 79, 10 October 2024). It was not characterised under national law as a criminal penalty and was not imposed as a result of criminal proceedings against the applicant. As to the severity of the measure, the Court can agree that it had considerable financial implications. However, that alone is not sufficient to classify forfeiture as a “penalty”. Imprisonment was not at stake for the applicant (see *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, §§ 94-97 and 112, 22 December 2020).

¹² The appeal chamber cited extensive case-law of the Supreme Court qualifying agreements between spouses aimed at frustrating enforcement of debt against one of them as constituting an abuse of rights.

¹³ The appeal chamber pointed out that the applicant herself had admitted before the court that the one-sided nature of the agreement had been caused in part by the criminal proceedings against M. and the desire to protect her as the caretaker of children.

18. Accordingly, the forfeiture was not a “penalty” within the meaning of Article 7 of the Convention.

19. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a).

B. Complaints under Article 1 of Protocol No. 1

1. Forfeiture of bail

20. The applicant argued that forfeiture had not been lawful because she had not been duly informed of the obligation to ensure M.’s proper conduct. The bail had been in effect only for the period set out in the ruling of 22 October 2019 and had not been extended. Therefore, the bail could not be forfeited since, at the time when M. had purportedly breached his obligations, the bail had not been in effect. The forfeiture had also been disproportionate. The applicant had not been the defendant in the criminal proceedings and forfeiture of her assets could not pursue the legitimate aim of ensuring the appropriate conduct of the criminal defendant since it had been she, and not the defendant, who had been held liable. No liability had been imposed on the defendant himself, even though an alternative sanction – a fine provided for by domestic law – could have been imposed on him.

21. The Court notes that the funds used for bail belonged, at least in part, to the applicant (see *Koval*, cited above, § 104). The Court considers that the forfeiture and freezing of funds constituted measures of control of the use of the applicant’s property and fall to be examined under the second paragraph of Article 1 of Protocol No. 1 (see *Lypovchenko and Halabudenco v. the Republic of Moldova and Russia*, nos. 40926/16 and 73942/17, § 137, 20 February 2024).

22. The Court notes the applicant’s arguments as to the alleged unlawfulness of the interference. However, it reiterates that it should not act as a court of fourth instance and will not question the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015, and *Alperin*, cited above, § 84).

23. In the present case, there is no indication that the domestic courts applied the rules in an erroneous or arbitrary manner or that the relevant legal provisions were not accessible and foreseeable.¹⁴ Furthermore, forfeiture

¹⁴ Article 182 § 2 of the Code of Criminal Procedure provides that bail can be posted by the defendant or another individual or legal entity (known as “surety”; *заставаодавець*). Paragraph 3 provides that, when bail is ordered, the defendant’s obligations and the consequences of failure to comply with them must be explained to him or her; it also provides that it must be explained to the surety of which offence the defendant is suspected, the potential punishment provided for by law for the offence, that the surety has a duty to ensure the defendant’s proper conduct, notably for the defendant to appear when summoned, and

pursued the legitimate aim of ensuring the proper conduct of criminal proceedings (see *Lavrechov*, § 46, and *Alperin*, § 79, both cited above).

24. As regards proportionality, it was established that M. had met his co-defendants and sent them abusive messages, which was confirmed by numerous witnesses and video evidence. The applicant's claims that she was not aware of the possible consequences of M.'s violating the imposed obligations were examined in detail by the courts in detail and ultimately disproven: at the time of the payment of the bail, the applicant was aware of the text of the decisions which specified the obligations imposed on the applicant and possible consequences. As the Court found above, domestic legislative provisions on that point were sufficiently clear and foreseeable.

25. The forfeiture of funds was the result of fully adversarial proceedings, during which the applicant was able to present her arguments and the amount of forfeiture was reduced in order to ensure its proportionality (compare *Lavrechov*, § 55, and *Alperin*, §§ 85-86, both cited above).

26. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

2. Freezing of funds

27. The applicant complained that funds in her bank account had been unjustifiably frozen, even though they had been her property and not M.'s.

28. The Court observes that the measure at issue, which was temporary in nature, was ordered by the domestic courts, which assessed its proportionality and legality and addressed the applicant's arguments. The domestic courts examined the property division agreement between the applicant and her husband and concluded that it was not a genuine transaction but constituted an attempt to escape possible confiscation. That decision was based on detailed assessment of the situation and there is no indication of any arbitrariness or unreasonableness in the courts' assessment.

29. There is no indication that the freezing measure was unlawful or that it was not in the general interest or disproportionate (see *Raimondo v. Italy*, 22 February 1994, § 27, Series A no. 281-A, and *Karahasanoglu v. Turkey*, nos. 21392/08 and 2 others, §§ 151-52, 16 March 2021; contrast *Uzan and Others v. Turkey*, nos. 19620/05 and 3 others, §§ 214-15, 5 March 2019).

30. It follows that this part of the application is also manifestly within the meaning of Article 35 § 3 (a) of the Convention.

the consequences of failure to comply with those obligations. Paragraph 8 provides that if a suspect or an accused breaches the obligations imposed on him or her, the bail amount paid is forfeited to the State. Paragraph 9 provides that the court may decide on whether to order forfeiture on a prosecutor's application or of its own motion at a hearing to which the defendant and the surety must be summoned.

C. Conclusion

31. In view of the above, the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 October 2026.

Martina Keller
Deputy Registrar

Gilberto Felici
President