Guide on Article 18 of the European Convention on Human Rights

Limitation on use of restrictions on rights

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# Guide on Article 18 of the Convention – Limitation on use of restrictions on rights

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 18 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (Ireland v. the United Kingdom, 18 January 1978, § 154, Series A no. 25, and, more recently, Jeronovičs v. Latvia [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (Konstantin Markin v. Russia [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (Bosphorus Hava Yollari Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was finalised are marked with an asterisk (*).
### 1. Introduction

**Article 18 of the Convention—Limitation on use of restrictions on rights**

“The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

**HUDOC keywords**

Restrictions for unauthorised purposes (18)

1. The object and purpose of Article 18 of the Convention are to prohibit the misuse of power (*Merabishvili v. Georgia* [GC], 2017, §§ 303 and 306; *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], 2019, § 189). According to the *Travaux préparatoires* of the Convention, it presents an “application of the theory of misapplication of power” (*CDH* (75) 11, p. 8). It guards against State suppression of the Convention rights and freedoms “by means of minor measures which, while made with the pretext of organising the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect” (*ibid.*, p. 3).

2. Article 18 complements the clauses which provide for restrictions of the rights and freedoms set forth in the Convention. Its wording “shall not be applied for any purpose other than” matches closely the wording of those clauses, for example, the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11 (*Merabishvili v. Georgia* [GC], 2017, §§ 287 and 293). Article 18 does not, however, serve merely to clarify the scope of the restriction clauses. It also expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous (*ibid.*, § 288; *Mammadli v. Azerbaijan*, 2018, § 93; *Rashad Hasanov and Others v. Azerbaijan*, 2018, § 116; *Navalny v. Russia* [GC], 2018, § 164; and *Korban v. Ukraine*, 2019, § 209).

3. Parallel to its autonomous function, Article 18 has been used by the Court as an aid to interpretation of the restriction clauses contained in other provisions of the Convention or its Protocols (*Merabishvili v. Georgia* [GC], 2017, § 269):

   - Article 8 § 2 of the Convention: *De Wilde, Ooms and Versyp v. Belgium*, 1971, § 93; *Gillow v. the United Kingdom*, 1986, § 54;
   - Article 15 of the Convention: *Lawless v. Ireland (no. 3)*, 1961, § 38 of “the Law” part;
   - Article 1 of Protocol No. 1: *Beyeler v. Italy* [GC], 2000, § 111.

4. Article 18 is rarely invoked and there have been few cases where the Court declared a complaint under Article 18 admissible, let alone found a violation (*Khodorkovskiy and Lebedev v. Russia*, 2013, § 898). A comprehensive survey of the Court’s case-law under Article 18 can be found in *Merabishvili v. Georgia* [GC], 2017 (§§ 264-281).
5. In view of the scarcity of its case-law under Article 18, the Court exercises increased diligence when deciding cases where allegations of improper motives are made (Khodorkovskiy and Lebedev v. Russia, 2013, § 898).

6. The Court examines the admissibility of complaints under Article 18 in accordance with the criteria set forth in Articles 34 (individual applications) and 35 (admissibility criteria) and the rules established in its case-law (see the Practical Guide on Admissibility Criteria; see also, among many examples, Merabishvili v. Georgia [GC], 2017, §§ 247-251; Denisov v. Ukraine [GC], 2018, § 136; Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 2019, §§ 269, 274 and 318; Khodorkovskiy and Lebedev v. Russia (no. 2), 2020, § 621; Kavala v. Turkey, 2019, § 201; Ibrahimov and Mammadov v. Azerbaijan, 2020, § 144; and Rustamzade v. Azerbaijan, 2019, § 58). The Court examines the admissibility of such complaints also in the absence of a specific preliminary objection by the Government (Korban v. Ukraine, 2019, §§ 204-205; Aliyev v. Azerbaijan, 2018, § 191; Natig Jafarov v. Azerbaijan, 2019, § 57; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 106; and Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 180).

7. The Court has made indications under Article 46 following its finding of a violation of Article 18 (Aliyev v. Azerbaijan, 2018, §§ 223-228; Navalnyy v. Russia [GC], 2018, §§ 185-186; for more details see Case-Law Guide on Article 46). In Ilgar Mammadov v. Azerbaijan (infringement proceedings) [GC], 2019, the Court determined the obligations of State responsibility following its finding of a violation of Article 18 in conjunction with Article 5 in Ilgar Mammadov v. Azerbaijan, 2014. An overview of the Committee of Ministers’ practice regarding the supervision of the execution of judgments, where the Court found a violation of Article 18, is outlined in Ilgar Mammadov v. Azerbaijan (infringement proceedings) [GC], 2019 (§§ 104-114).
II. Scope of application

A. The accessory nature of Article 18

8. In a similar way to Article 14, Article 18 of the Convention has no independent existence; it can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction (Kamma v. the Netherlands, Commission’s report, 1974, p. 9; Gusinskiy v. Russia, § 73; Cebotari v. Moldova, 2007, § 49; Khodorkovskiy v. Russia, 2011, § 254; OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, § 663; Lutsenko v. Ukraine, 2012, § 105; Tymoshenko v. Ukraine, 2013, § 294; Ilgar Mammadov v. Azerbaijan, 2014, § 137; Rasul Jafarov v. Azerbaijan, 2016, § 153; Tchankotadze v. Georgia, 2016, § 113; Mammadli v. Azerbaijan, 2018, § 93; Rashad Hasanov and Others v. Azerbaijan, 2018, § 116; Aliyev v. Azerbaijan, 2018, § 198; Navalnyy v. Russia [GC], 2018, § 164; and Navalnyy v. Russia (no. 2), 2019, § 84).

9. As with Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies (Merabishvili v. Georgia [GC], 2017, § 288; see also Kamma v. the Netherlands, Commission’s report, 1974, p. 9; Gusinskiy v. Russia, 2004, § 73; Cebotari v. Moldova, 2007, § 49; Aliyev v. Azerbaijan, 2018, § 198; and Navalnyy v. Russia [GC], 2018, § 164).

B. Applicability of Article 18

10. For Article 18 to become applicable in conjunction with another substantive provision of the Convention or its Protocols, a restriction should be imposed on the right under the substantive provision (Josephides v. Turkey (dec.), 1999, § 4). Where no arguable issue, or no interference with the applicant’s rights, under the relevant substantive provision was established, Article 18 cannot be relied upon (Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 2019, §§ 316-317).

11. A violation of Article 18 can only arise where the right or freedom which has been interfered with is subject to restrictions permitted under the Convention (Kamma v. the Netherlands, Commission’s report, 1974, p. 9; Oates v. Poland (dec.), 2000; Gusinskiy v. Russia, 2004, § 73); in other words when it is a qualified right (Merabishvili v. Georgia [GC], 2017, §§ 265 and 271; Mammadli v. Azerbaijan, 2018, § 93; Rashad Hasanov and Others v. Azerbaijan, 2018, § 116; Navalny v. Russia [GC], 2018, § 164; Navalny v. Russia (no. 2), 2019, § 84; and Khodorkovskiy and Lebedev v. Russia (no. 2), 2020, § 620).

12. A complaint under Article 18 in conjunction with an absolute right will therefore be incompatible with the Convention ratione materiae (Timurtas v. Turkey, Commission’s report, 1998, § 329).

13. The question whether Articles 6 and 7 of the Convention contain any express or implied restrictions which may form the subject of the Court’s examination under Article 18 of the Convention remains open (Ilgar Mammadov v. Azerbaijan (no. 2), 2017, § 261). Compare, for example,

- Navalnyy and Ofitserov v. Russia, 2016 (§ 129), and Navalnyye v. Russia, 2017 (§ 88), where, in the circumstances relevant to those cases, the Court rejected as incompatible ratione materiae complaints under Article 18 read in conjunction with Articles 6 and 7 as these provisions did not contain any express or implied restrictions in so far as relevant to those cases;
- Nastase v. Romania (dec.), 2014 (§§ 105-109), where the Court rejected as manifestly ill-founded a complaint under Article 18 read in conjunction with Article 6;
- Khodorkovskiy v. Russia (no. 2) (dec.), 2011 (§ 16) and Lebedev v. Russia (no. 2) (dec.), 2010 (§§ 310-314), where the Court declared admissible the applicants’ complaints under Article 18 read in conjunction with Articles 5, 6, 7 and 8 and subsequently, having
examined the merits of those complaints in the judgment of *Khodorkovskiy and Lebedev v. Russia*, 2013, §§ 897-909, found no violation of Article 18;

- **Ilgar Mammadov v. Azerbaijan** (infringement proceedings) [GC], 2019 (§§ 189 and 208), where the Court considered that its finding of a violation of Article 18 in conjunction with Article 5 in *Ilgar Mammadov v. Azerbaijan*, 2014, vitiated any later action resulting from the pursuit of the abusive criminal charges, including the applicant’s conviction and prison sentence.

### C. Examples of application of Article 18 in conjunction with other substantive provisions

14. The Convention organs have examined complaints under Article 18 in conjunction with the provisions listed below:


- **Article 6** of the Convention: *Nastase v. Romania* (dec.), 2014, §§ 105-109; *Khodorkovskiy v. Russia (no. 2)* (dec.), 2011, § 16; and *Lebedev v. Russia (no. 2)* (dec.), 2010, §§ 310-314;


- **Article 9** of the Convention: *C.R. v. Switzerland* (dec.), 1999;

- **Article 10** of the Convention: *Şener v. Turkey*, 2000, §§ 59-62;

- **Article 11** of the Convention: *Navalnyy v. Russia* [GC], 2018, § 176;


15. Where restrictions on the applicant’s rights under substantive provisions other than Article 5 were imposed as part of the detention order and, as such, are indissociable therefrom, the Court may consider it appropriate to examine the complaint under Article 18 in conjunction only with Article 5 (*Navalny v. Russia (no. 2)*, 2019, § 86).

D. Allegations of ulterior purposes examined under other provisions of the Convention

17. Allegations of improper motives or ulterior purposes underlying restrictions of Convention rights are sometimes raised and examined under substantive provisions of the Convention.

- Article 5 § 1: If there is some manifest irregularity which, seen in context, shows that a deprivation of liberty was chiefly meant for an ulterior purpose, the Court finds an absence of a legitimate ground for the deprivation of liberty and accordingly a breach of Article 5 § 1. Such was the case where:
  - the applicants were detained on vague or fabricated charges or their detention was extended in order to prevent or punish their participation in rallies (Shimovolos v. Russia, 2011, §§ 52-57; Hakobyan and Others v. Armenia, 2012, § 123; Nemtsov v. Russia, 2014, § 103; Gafgaz Mammadov v. Azerbaijan, 2015, §§ 107-108; Kasparov v. Russia, 2016, §§ 50-56; Huseynli and Others v. Azerbaijan, 2016, §§ 146-147; Ibrahimov and Others v. Azerbaijan, 2016, §§ 126-127; Navalnyy and Yashin v. Russia, 2014, §§ 92-95);
  - the authorities manipulated procedures to delay having to obtain judicial authorisation for the detention, as required under domestic law (Oleksiy Mykhaylovych Zakharkin v. Ukraine, 2010, §§ 86-88), or in order to proceed with a disguised extradition (Bozano v. France, 1986, §§ 59-60; Nowak v. Ukraine, 2011, § 58; Azimov v. Russia, 2013, §§ 163 and 165; Eshonkulov v. Russia, 2015, § 65);
  - the applicant was illegally abducted and surrendered to another State (Iskandarov v. Russia, 2010, §§ 109-115 and 148-151);
  - the authorities summoned asylum-seekers to complete their asylum request, thereby seeking to gain their trust with a view to arresting and subsequently deporting them (Çonka v. Belgium, 2002, § 41);
  - citizens of another State were indiscriminately arrested with a view to being deported en masse as a measure of reprisal (Georgia v. Russia (II) [GC], 2014, §§ 185-186);
  - the applicant was arrested and detained with a view to acquiring leverage over the criminal proceedings against his brother (Giorgi Nikolaishvili v. Georgia, 2009, § 57);
  - the applicant was apprehended as a witness – although the investigator’s real intent was to charge him as a defendant – in order to change the venue of the detention proceedings to a more convenient one (Khodorkovskiy v. Russia, 2011, § 142).

- Article 6: In Jordan v. the United Kingdom, 2004, criminal proceedings against the applicant were stayed on health grounds, providing, inter alia, that he did not engage in any activities either political, social or personal, which would demonstrate that he was in fact able to stand trial irrespective of his medical condition. The Court examined whether this condition was an instance of a prohibition on political activity “in return” for the dropping of criminal charges.

- Article 11: In The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2), 2011, the Court examined whether a refusal to register the applicant party sought to penalise it on account of the views or policies it promoted (§§ 85-89).

- Article 14 in conjunction with Article 11: In Bączkowski and Others v. Poland, 2007, the Court examined whether the refusal to allow a protest march against homophobia was influenced by the mayor’s publicly expressed homophobic opinions (§§ 97 and 100).
E. When to apply Article 18

18. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (Merabishvili v. Georgia [GC], 2017, § 291; Mammadli v. Azerbaijan, 2018, § 97; Rashad Hasanov and Others v. Azerbaijan, 2018, § 120; Aliyev v. Azerbaijan, 2018, § 199; Navalny v. Russia [GC], 2018, § 164; Navalny v. Russia (no. 2), 2019, § 92; Kavala v. Turkey, 2019, § 198; Natig Jafarov v. Azerbaijan, 2019, § 63; Ibrahimov and Mammadov v. Azerbaijan, 2020, § 150; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 112; and Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 186).

19. Where the parties’ submissions under Article 18 are essentially the same as their arguments regarding the alleged interference with the applicant’s rights under the relevant substantive provisions of the Convention, the Court has no grounds to conclude that the complaint under Article 18 represents a fundamental aspect of the case (Razvozhayev v. Russia and Ukraine and Udaltsov v. Russia, 2019, § 305). Thus, before embarking on the analysis of a complaint under Article 18, the Court will first ascertain whether the crux of it has been already examined under the relevant substantive provision (Korban v. Ukraine, 2019, § 204; Khodorkovskiy and Lebedev v. Russia (no. 2), 2020, § 622).

20. The Court does not usually raise the issue of the application of Article 18 of its own motion (see, however, Haziyev v. Azerbaijan, 2018, § 43, and Rustamzade v. Azerbaijan, 2019, § 56: when communicating these cases to the respondent Government, the Court put a question regarding Article 18 of its own initiative to eventually find that the issue either did not warrant a separate examination or had not been raised before the domestic courts).

III. The purpose of restrictions

A. The notion of “ulterior purpose”

22. An ulterior purpose is a purpose which is not prescribed by the relevant provision of the Convention and which is different from that proclaimed by the authorities (or the one which can be reasonably inferred from the context) ([Merabishvili v. Georgia] [GC], 2017, § 292; [Khodorkovskiy v. Russia], 2011, § 255; [Lutsenko v. Ukraine], 2012, § 106; [Tymoshenko v. Ukraine], 2013, § 294; [Khodorkovskiy and Lebedev v. Russia], 2013, § 899; [Ilgar Mammadov v. Azerbaijan], 2014, § 137; [Rasul Jafarov v. Azerbaijan], 2016, § 153; [Tchankotadze v. Georgia], 2016, § 113).

23. The notion of ulterior purpose is related to that of “bad faith”, but they are not necessarily equivalent in each case ([Merabishvili v. Georgia] [GC], 2017, § 283).

24. The Court has distanced itself from its previous approach which consisted in applying a general rebuttable assumption that the national authorities of the High Contracting States have acted in good faith and in focusing its scrutiny on proof of bad faith ([Khodorkovskiy v. Russia], 2011, § 255; [Lutsenko v. Ukraine], 2012, § 106; [Tymoshenko v. Ukraine], 2013, § 294; [Khodorkovskiy and Lebedev v. Russia], 2013, § 899; [Ilgar Mammadov v. Azerbaijan], 2014, § 137; [Rasul Jafarov v. Azerbaijan], 2016, § 153). Instead, it aims at an objective assessment of the presence or absence of an ulterior purpose, and thus of a misuse of power ([Merabishvili v. Georgia] [GC], 2017, §§ 282-283).

25. At the same time, the importance of the good faith obligation is paramount in the context of the execution of the Court’s judgments, especially where a violation of Article 18 was found. When examining the respondent State’s compliance with their obligation under Article 46, the Court will consider whether they have acted in “good faith”, in a manner compatible with the “conclusions and spirit” of the judgment to be executed ([Ilgar Mammadov v. Azerbaijan] [infringement proceedings] [GC], 2019, §§ 214 and 217).

26. The Court has examined allegations of the following ulterior purposes:

- intimidation and putting pressure on the applicant with a view to obtaining information or other advantages ([Gusinskiy v. Russia], 2004, § 76; [Cebotari v. Moldova], 2007, § 53; [Merabishvili v. Georgia] [GC], 2017, § 353; [Dochnal v. Poland], 2012, § 116);
- political and/or economic motivation behind criminal prosecution and other relevant proceedings ([Khodorkovskiy v. Russia], 2011, § 254; [OAO Neftyanaya Kompaniya Yukos v. Russia], 2011, § 665; [Khodorkovskiy and Lebedev v. Russia], 2013, § 889; [Nastase v. Romania] (dec.), 2014, § 109; [Tchankotadze v. Georgia], 2016, § 114; [Merabishvili v. Georgia] [GC], 2017, § 332; [Batiashvili v. Georgia], 2019, §§ 101-103; and [Korban v. Ukraine], 2019, § 203);
- suppression of political pluralism ([Navalnyy v. Russia] [GC], 2018, § 175, and [Navalnyy v. Russia (no. 2)], 2019, § 98).
B. Methodology and general principles

1. Single purpose and plurality of purposes

27. Sometimes, a right or freedom is restricted solely for a purpose which is not prescribed by the Convention. It is equally possible that a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention, so that it is considered to pursue a plurality of purposes (*Merabishvili v. Georgia* [GC], 2017, § 292).

28. When considering an allegation under Article 18, the Court must therefore establish:

- whether the restriction of the applicant’s right or freedom was applied for an ulterior purpose;
- whether the restriction pursued both a purpose prescribed by the Convention and an ulterior one, that is, whether there was a plurality of purposes;
- which purpose was predominant (*Merabishvili v. Georgia* [GC], 2017, § 309).

29. The following principles, formulated for situations of *plurality of purposes*, also provide guidance for situations where no legitimate aim or purpose has been shown (*Navalnyy v. Russia* [GC], 2018, § 165).

2. The notion of “predominant purpose”

30. Any public policy or individual measure may have a “hidden agenda” (*Khodorkovskiy v. Russia*, 2011, § 255; *Lutsenko v. Ukraine*, 2012, § 106; and *Tymoshenko v. Ukraine*, 2013, § 294). Where it is established that a restriction pursues a plurality of purposes, the mere presence of a purpose which does not fall within the respective restriction clause cannot of itself give rise to a breach of Article 18. On the other hand, a finding that the restriction pursues a purpose prescribed by the Convention does not necessarily rule out a breach of Article 18 either. The prescribed purpose does not invariably expunge the ulterior one (*Merabishvili v. Georgia*, 2017, §§ 303-304).

31. Where a restriction pursues an ulterior purpose and a purpose prescribed by the Convention, the Court will determine which is predominant. A predominant purpose in this context is the one that truly actuated the authorities and which was the overriding focus of their efforts (*Merabishvili v. Georgia* [GC], 2017, § 303; *Navalnyy v. Russia* [GC], 2018, § 165; and *Korban v. Ukraine*, 2019, § 211-213).

32. A restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts (*Merabishvili v. Georgia* [GC], 2017, § 305). In other words, if it is established that a restriction also pursued an ulterior purpose, there will only be a breach of Article 18 if the ulterior purpose is predominant (*ibid.*, § 318; *Navalnyy v. Russia* [GC], 2018, § 165; and *Korban v. Ukraine*, 2019, § 211-213).

33. Conversely, if the prescribed purpose was the main purpose, the one that truly actuated the authorities, though they also wanted to gain some other advantage, the restriction does not run counter to Article 18 (*Merabishvili v. Georgia* [GC], 2017, § 305, and *Navalnyy v. Russia* [GC], § 165).

34. Which purpose is predominant in a given case depends on all the circumstances.

3. Nature and degree of reprehensibility of the alleged ulterior purpose

35. The Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals
and values of a democratic society governed by the rule of law (Merabishvili v. Georgia [GC], 2017, § 307; Navalnyy v. Russia [GC], 2018, § 165; and Korban v. Ukraine, 2019, § 214).

36. The Court will proceed in this way where allegations of an ulterior purpose appear coherent with the relevant domestic context or with a view to establishing which purpose is predominant (Merabishvili v. Georgia [GC], 2017, § 307, and Navalnyy v. Russia [GC], 2018, §§ 173-174).  

37. In this respect, the Court will assess the impact of the impugned restriction and the extent of gravity of the ulterior purpose, as defined by the core of the applicant’s Article 18 complaint. In particular, the Court may examine whether the impugned restriction would affect merely the applicant or his fellow activists/supporters or the very essence of democracy as a means of organising society in which individual freedom may only be limited in the general interest (Navalnyy v. Russia [GC], 2018, §§ 173-174; Natig Jafarov v. Azerbaijan, 2019, § 69; and Kavala v. Turkey, 2019, § 231).

4. Continuing situation  

38. Where the restriction of a Convention right amounts to a continuing situation, in order for it not to contravene Article 18, its chief purpose must remain the purpose prescribed by the Convention throughout its duration. The Court will therefore assess what purpose(s) it pursued throughout the whole period of its duration. In particular, as the assessment of which purpose was predominant may vary over time, it will ascertain whether, at a given moment during the course of the application of the impugned restriction, an ulterior purpose supplanted the prescribed one or become predominant (Merabishvili v. Georgia [GC], 2017, §§ 308 and 351, and Navalnyy v. Russia [GC], 2018, § 171).

5. Repetitive restrictions and patterns of misuse of power  

39. A sequence of repetitive measures specifically and personally targeting an applicant can be analysed as a continuing situation, in which the predominant purpose may vary over the period under examination. What might possibly have seemed a legitimate aim or purpose at the outset may appear less plausible over time (Navalnyy v. Russia [GC], 2018, §§ 165-171).

40. The repetitive nature of restrictions imposed by a respondent State in pursuance of ulterior purposes is an important factor to consider. Faced with a series of similar cases brought by different applicants, or a sequence of identical measures directed against the same applicant, the Court will assess whether such instances, viewed as a whole, amount to a pattern of misuse of power targeting specific groups or individuals (Navalnyy v. Russia [GC], 2018, § 167-170, and Aliyev v. Azerbaijan, 2018, § 223).

41. Where this is the case, the Court will consider whether any subsequent well-founded allegations of ulterior purposes against the impugned State belong to the established pattern (Navalnyy v. Russia (no. 2), 2019, § 94; Natig Jafarov v. Azerbaijan, 2019, §§ 64-65; Ibrahimov and Mammadov v. Azerbaijan, 2020, §§151-152; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, §§ 113-114; and Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 187-188).

6. Allegations of several ulterior purposes  

42. When examining allegations of several ulterior purposes, the Court will assess whether an ulterior purpose was predominant with respect to each of the purposes cited by the applicant (Merabishvili v. Georgia [GC], 2017, § 319).

43. In some cases, the Court has focused its scrutiny on distinguishable case features allowing it to look into the matter separately from allegations of politically motivated prosecution (Lutsenko v. Ukraine, 2012, § 108; Tymoshenko v. Ukraine, 2013, § 298; Ilgar Mammadov v. Azerbaijan, 2014, § 140; and Rasul Jafarov v. Azerbaijan, 2016, § 155).
C. Restrictions applied solely for an ulterior purpose

44. In the following cases, where the Court found a breach of Article 18 in conjunction with Article 5, the applicants’ detention pursued solely an ulterior purpose, as there had been either no valid grounds to detain them (Lutsenko v. Ukraine, 2012, §§ 63-65 and 67-72; Tymoshenko v. Ukraine, 2013, §§ 269-271; Navalny v. Russia [GC], 2018, § 71; and Navalny v. Russia (no. 2), 2019, § 93) or the charges against them were not based on a “reasonable suspicion” within the meaning of Article 5 § 1 (c) (Cebotari v. Moldova, 2007, § 52; Ilgar Mammadov v. Azerbaijan, 2014, § 100; Rasul Jafarov v. Azerbaijan, 2016, § 133; Mammadli v. Azerbaijan, 2018, § 96; Rashad Hasanov and Others v. Azerbaijan, 2018, § 119; Aliyev v. Azerbaijan, 2018, § 164; Natig Jafarov v. Azerbaijan, 2019, § 68; Kavala v. Turkey, 2019, § 218; Ibrahimov and Mammadov v. Azerbaijan, 2020, § 149; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 111; and Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 185). In Navalny v. Russia [GC], 2018, and in Aliyev v. Azerbaijan, 2018, the Court found a violation of Article 18 also in conjunction with, respectively, Article 11 and Article 8, noting that the impugned restrictions had not pursued any of the legitimate aims under the said provisions.

1. Cases not concerning an established pattern of misuse of power

45. In the case of Cebotari v. Moldova, 2007, which is closely linked to the case of Oferta Plus S.R.L. v. Moldova, 2006, the applicant, in his capacity as the head of Moldtransselectro, a State-owned power distribution company, requested the Moldovan Ministry of Finance to issue a Treasury bond in favour of Oferta Plus, a private company which had paid for the electricity supplied from Ukraine to Moldtransselectro and consumed, inter alia, by State institutions. Subsequently, Oferta Plus brought successful proceedings against the Ministry of Finance for refusing to cash in the bond. After the Moldovan Government had been informed about the application lodged by Oferta Plus with the Court in respect of the non-enforcement of the final judgment in its favour, that judgment was quashed and criminal proceedings were initiated against its Chief Executive Officer and Mr Cebotari on charges of large-scale embezzlement of State property. The charges were based on the premise that Oferta Plus had not paid for the electricity supplied specifically to State institutions and thus had fraudulently obtained the Treasury bond. In Oferta Plus S.R.L. v. Moldova, 2006, the Court found a breach of Article 34 on the ground that the impugned criminal proceedings were aimed at discouraging the company from pursuing its application before the Court (§ 143). In Cebotari v. Moldova, 2007, having regard to the clear findings in the final judgments of the civil courts in the dispute between Oferta Plus and the Ministry of Finance, the Court held that the Government had failed to satisfy it that there was a reasonable suspicion that the applicant had committed an offence, with the result that there was no justification for his arrest and detention. The only aim of his pre-trial detention, therefore, was to put pressure on him with a view to hindering Oferta Plus from pursuing its application before the Court. There had thus been a breach of Article 18 in conjunction with Article 5 § 1 (§§ 52-53).

46. In Lutsenko v. Ukraine, 2012, soon after a change of power, the applicant – a former Minister of the Interior and opposition leader – was charged with abuse of office. Shortly after a newspaper had published an interview in which he denied the accusations against him, he was remanded in pre-trial detention. His detention did not pursue any purpose prescribed by the Convention, as none of the grounds advanced by the authorities were found by the Court to be compatible with the requirements of Article 5 § 1 (§§ 66-74). In addition, the fact that the applicant’s communication with the media was explicitly indicated as one of such grounds clearly demonstrated an attempt by the authorities to punish him for publicly disputing the charges against him, which qualified as an ulterior purpose contrary to Article 18 in conjunction with Article 5 (§§ 108-110).

47. The case of Tymoshenko v. Ukraine, 2013, also concerned criminal prosecution of an opposition leader and a former Prime Minister, who was charged with excess of authority and abuse of office
soon after a change of power. The Court likewise found a breach of Article 5 § 1 taken alone, as the applicant’s pre-trial detention did not pursue any of the purposes envisaged by that provision. In addition, the factual context and the reasons given by the domestic authorities suggested that the main justification for the applicant’s detention was in fact her supposed hindering of the proceedings and contemptuous behaviour. For the Court, her detention therefore pursued solely an ulterior purpose, namely punishing her for her conduct during the impugned trial, in violation of Article 18 in conjunction with Article 5 (§§ 299-301).

48. In *Kavala v. Turkey*, 2019, the applicant, a businessman and human-rights defender who had contributed to setting up numerous non-governmental organisations, was remanded in custody on suspicion of attempting to trigger an insurrection, in connection with mass protests in 2013, and to overthrow the Government through force and violence, in connection with an attempted military *coup d’état* in 2016. He was eventually charged only with the former of the above offences and shortly after public accusations made against him by the President, even though, by that time, he had been held in pre-trial detention for more than a year, without any significant investigative acts taking place. The Court considered that the measures taken against the applicant had not been justified by reasonable suspicions, but had essentially been based on facts that could not be reasonably considered as behaviour criminalised under domestic law and, moreover, were largely related to his exercise of the rights guaranteed by Articles 10 and 11 of the Convention. While leading to a breach of Article 5 § 1 taken alone, these circumstances were also taken into account in the context of the complaint under Article 18. A breach of the latter provision was found since the impugned measures were found to have pursued solely the ulterior purpose of reducing the applicant to silence as a human-rights defender and NGO activist. That was an ulterior purpose of significant gravity, especially given the particular role of such groups in a pluralist democracy (§§ 220-232).

2. Pattern indicative of specific and personal targeting

49. In *Navalny v. Russia* [GC], 2018, the applicant, an important political opposition figure and anti-corruption campaigner, was arrested seven times over a period of two years at various peaceful public gatherings and was prosecuted for administrative offences related to their technically unlawful nature. The Court found that the applicant’s arrest and detention were arbitrary and unlawful, in violation of Article 5 § 1 taken alone. It also found a breach of Article 11 taken alone, as on five occasions the impugned measures had been disproportionate and on two occasions they had not pursued any of the legitimate aims for which Article 11 § 2 provides. In particular, during the fifth episode, the applicant was penalised when he was followed by a group of people after he had left a stationary demonstration. During the sixth episode, he found himself amidst a group of activists in front of a courthouse because they had been denied entry to the court hearing. Under Article 18, the Court focused its examination on those two episodes, which, taken separately, did not raise any issue of the plurality of purposes. However, taking into account the sequence and pattern of the events viewed as a whole, the Court considered that targeting the applicant as an opposition politician, affecting as it did not only himself or his fellow activists/supporters but the very essence of democracy, would amount to an ulterior purpose of “significant gravity”. Seen in the broader context of the Russian authorities’ attempts at the material time to bring the opposition’s political activity under control, the restrictions imposed in the fifth and sixth episodes were found to have pursued an ulterior purpose, namely to suppress political pluralism, in violation of Article 18 in conjunction with Articles 5 and 11 (§§ 163-176).

50. In *Navalny v. Russia (no. 2)*, 2019, the same applicant was placed under house arrest with restrictions on communication, correspondence and use of the Internet, radio and television. The Court found a violation of Article 5 and Article 10 taken separately, since the impugned measures had been applied without any apparent connection with the requirements of the criminal investigation. As they had been imposed on the applicant immediately following his two arrests
examined in *Navalny v. Russia* [GC], 2018 (sixth and seventh episodes - see above), the Court considered them in the light of the sequence of events and the contextual evidence analysed in the above judgment of the Grand Chamber. The impugned measures were found to have pursued the same ulterior purpose, namely to suppress political pluralism through curtailing the applicant’s public activity, in breach of Article 18 in conjunction with Article 5 (§§ 93-98).

3. Pattern of misuse of power targeting specific groups


52. In *Ilgar Mammadov v. Azerbaijan*, 2014, the applicant, an opposition politician critical of the Government, published on his Internet blog his first-hand account of a local riot, which had spontaneously started a day before he arrived on site. His blog posts, which were immediately picked up by the press, contradicted the Government’s version of the events and contained sourced information which the Government had reportedly attempted to withhold from the public. On the following day the Prosecutor General’s Office and the Ministry of Internal Affairs issued a joint press statement accusing the applicant of acting illegally with a view to inflaming the situation in the country. Several days later, after being questioned, the applicant was charged with organising the riot and remanded in custody. The Court found a breach of Article 5 § 1 taken alone, since the prosecution had failed to produce, either before the domestic courts or otherwise, any objective information or evidence giving rise to a “reasonable suspicion” against the applicant. The Court further inferred from the above circumstances that his detention was linked to his blog posts and thus pursued only the ulterior purpose of silencing and punishing him for criticising the Government and attempting to disseminate the information the Government were trying to hide. The detention thus constituted a breach of Article 18 in conjunction with Article 5 (§§ 142-143).

53. In the following cases, well-known Azerbaijani civil society activists, human rights defenders and leaders of non-governmental organisations (NGOs) were remanded in custody and charged mainly with illegal entrepreneurship, large-scale tax evasion and/or abuse of power on account of alleged administrative irregularities in connection with the receipt and use of foreign grants by their NGOs. This took place in the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding and an ongoing campaign to crack down on human rights defenders in Azerbaijan.

54. In *Aliev v. Azerbaijan*, 2018, and *Rasul Jafarov v. Azerbaijan*, 2016, the applicants had been involved in the preparation of various reports, including in the context of the work of international bodies, relating to human rights issues in Azerbaijan. They were arrested shortly after their participation in a Council of Europe event where they had criticised the Azerbaijani authorities for human rights abuses.

55. In *Mammadli v. Azerbaijan*, 2018, the applicant was the chairman and co-founder of an NGO specialising in the monitoring of the elections. Criminal proceedings were instituted in connection with alleged irregularities in the financial activities of the NGO a few days after it had published a report criticising the 2013 presidential elections as falling short of democratic standards. The applicant was arrested and charged a month later.

56. In *Natig Jafarov v. Azerbaijan*, 2019, the applicant was an official representative of an opposition political movement campaigning against the amendments to the Constitution, which were proposed
for adoption at a referendum. He was arrested during the active phase of the registration process for the referendum campaign and released only after his movement had announced its decision to stop its participation in the said campaign.

57. In Khadija Ismayilova v. Azerbaijan (no. 2), 2020, the applicant was a well-known investigative journalist who published articles on corruption involving the President and his family and received threats in this respect (see Khadija Ismayilova v. Azerbaijan, 2019). She was arrested on the basis of a false claim obtained under coercion, shortly after the then head of the Presidential Administration had publicly accused her of treason and spreading lies.

58. In Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, the applicants were a director and senior researcher of an NGO involved in joint projects with its Armenian counterparts with a view to promoting peace and reconciliation between the two countries. They were arrested and placed in pre-trial detention, on suspicion, inter alia, of cooperating with Armenian secret services.

59. The Court found that the applicants had been placed in pre-trial detention in the absence of a “reasonable suspicion”, in violation of Article 5 § 1(c) taken alone (Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 185; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 111; Natig Jafarov v. Azerbaijan, 2019, § 62; Aliyev v. Azerbaijan, 2018, § 164; Rasul Jafarov v. Azerbaijan, 2016, § 156; and Mammadli v. Azerbaijan, § 96). They had been charged with serious offences “whose core constituent elements could not reasonably be found on the existing facts”.

60. Taking into account the general context of these cases, the Court found a breach of Article 18 in conjunction with Article 5 as the applicants’ arrests and detentions had pursued solely the ulterior purpose of silencing and punishing them for their political engagement and/or activities as well as preventing them from pursuing these (Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 194; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 119; Natig Jafarov v. Azerbaijan, 2019, § 70; Aliyev v. Azerbaijan, 2018, § 215; Rasul Jafarov v. Azerbaijan, 2016, §§ 159-163; and Mammadli v. Azerbaijan, 2018, §§ 99-104). In Aliyev v. Azerbaijan, 2018, on the same grounds, the Court found a violation of Article 18 in conjunction with Article 8, in connection with the search and seizure at the applicant’s home and office, which had not pursued any of the legitimate aims under Article 8 § 2 taken alone (Aliyev v. Azerbaijan, 2018, § 187).

61. The following cases concern prosecution of the members of the NGO NIDA, one of the most active youth movements in Azerbaijan, which had been behind a number of protests against the government.

62. In Rashad Hasanov and Others v. Azerbaijan, 2018, the applicants were civil society activists and board members of the said NGO. They actively participated, together with other NIDA members, in organising and conducting a series of peaceful protests against the deaths of Azerbaijani soldiers in non-combat situations. Three days before one of the scheduled demonstrations, some NIDA members were arrested and charged with possessing narcotics and Molotov cocktails. In this respect, the Prosecutor General’s Office and the Ministry of National Security said, in a joint press statement, that the arrested NIDA members, who “had actively participated in a number of illegal activities of the organisation”, planned to incite violence and civil unrest. The statement also denounced illegal attempts to undermine the social-political stability of the country by some radical destructive forces. A few days later, the applicants were remanded in custody and accused of unlawfully obtaining the Molotov cocktails and arranging their storage in the flats of the NIDA members previously arrested. The Court found a violation of Article 5 § 1 taken alone, as the prosecution authorities had never demonstrated any information or evidence showing that the applicants had any connection with the Molotov cocktails in question, and thus providing a “reasonable suspicion” to justify their arrest and detention. These circumstances, seen against the background of the crackdown on civil society in Azerbaijan, led the Court to conclude that the actual purpose of the applicants’ detention was to silence and punish them for their active social and
political engagement and their activities in NIDA and that there was thus a violation of Article 18 in conjunction with Article 5 (§§ 122-125).

63. In Ibrahimov and Mammadov v. Azerbaijan, 2020, the applicants, members of the above NGO NIDA, were arrested several hours after painting graffiti with anti-government slogans on the statue of the former president of Azerbaijan and disseminating photographs thereof on social networks. They were charged with serious drug-related offences. In this connection, the Court found a violation of Article 5 § 1 taken alone, concluding that the minimum standard of “reasonableness” of suspicion had not been met in view of the applicants’ status, sequence of events, investigations and the authorities’ conduct. In the light of the general context and its findings in the above case Rashad Hasanov and Others v. Azerbaijan, disclosing specific targeting of NIDA and its members by the authorities, the Court established that the actual purpose behind the applicants’ detention and prosecution was to punish them for the above anti-government conduct. Accordingly, a breach of Article 18 in conjunction with Article 5 was found (§§ 151-157).

D. Restrictions pursuing a plurality of purposes

64. In the following cases, the Court found a violation of Article 18 in conjunction with Article 5 § 1, on the grounds that the applicants’ detention, while pursuing the purpose of bringing them before a competent legal authority, as prescribed by Article 5 § 1 (c), was chiefly meant for another purpose not prescribed by the Convention. These cases do not belong to any established pattern of misuse of power.

65. In Gusinskiy v. Russia, 2004 (§§ 73-78), the applicant was a former chairman and majority shareholder of a private media holding company, Media Most, which had been involved in a bitter dispute over its debts with Gazprom, a natural gas monopoly controlled by the State. The applicant was arrested and imprisoned on suspicion of fraud. While he was in detention, the acting Minister for Press and Mass Communications offered to drop the charges against him if he sold his media company to Gazprom, at a price to be determined by Gazprom. An agreement was signed by the parties and endorsed by the Acting Minister. A few days later, the investigator stayed the prosecution on the grounds that the applicant had significantly compensated for the harm caused to the interests of the State by voluntarily transferring Media Most shares to a legal entity controlled by the State. For the Court, the evidence gathered by the investigating authorities could “satisfy an objective observer” that the applicant might have committed the fraud offence; however, the facts strongly suggested that his prosecution had in fact been “used as part of commercial bargaining strategies”. The predominant purpose for his detention was therefore not to bring him before a competent legal authority, but to intimidate him into selling his company. There had thus been a breach of Article 18 (§ 76).

66. In Merabishvili v. Georgia [GC], 2017, shortly after a change of power, the applicant – a former Prime-Minister and the leader of the main opposition party – was placed in pre-trial detention on charges of embezzlement, abuse of authority and other offences. One night during his pre-trial detention, he was covertly removed from his cell to be questioned by the Chief Prosecutor about the death of another former Prime Minister and about the financial activities of the former President, Mr Saakashvili. The Court found that nothing in the incriminating material appeared to cast doubt on the reasonableness of the suspicion against the applicant. His pre-trial detention was lawful and pursued a purpose consistent with Article 5 § 1 (c) (§§ 187, 206 and 208). However, as the pre-trial detention constituted a continuing situation, the Court was called to assess what purposes it pursued throughout the whole period of its duration and which one was predominant. There was no evidence that until the applicant’s removal from his cell for questioning, that is, for a period of nearly seven months, the authorities had pursued any ulterior purpose. That incident revealed, however, that the authorities had attempted to use his pre-trial detention as a means to pressure him into providing information and that, at the material time, his detention thus pursued an ulterior purpose alongside the prescribed one. At the same time, the reasons for keeping him in pre-trial
detention appeared to have already receded for some time before the incident, which led the Court to find a breach of Article 5 § 3. Having regard to all the circumstances of the impugned incident, the Court was satisfied that the predominant purpose of the applicant’s detention had changed from the initial, prescribed purpose of investigating offences on the basis of reasonable suspicion to the subsequent, ulterior purpose of obtaining information from the applicant. There had therefore been a violation of Article 18 read in conjunction with Article 5 § 1 (§ 353).

67. In the following cases the Court did not exclude the possibility that the authorities had pursued an ulterior purpose, but was unable to find that such purpose was predominant.

68. In Merabishvili v. Georgia [GC], 2017, the Court also examined the allegation that the applicant’s arrest and pre-trial detention were meant to remove him from the political scene. Having regard to the broader political context, in particular, the bitter antagonism between the applicant’s opposition party and the ruling party, the timing of his detention and the nature of the offences with which he had been charged, the Court found it understandable that there was a degree of suspicion of a political impetus behind the charges, even though the charges themselves were not overtly political. However, having examined the manner in which the criminal proceedings had been conducted, the Court was not satisfied that the predominant purpose of the applicant’s detention was to hinder his participation in politics rather than to ensure the proper conduct of the criminal proceedings against him (§§ 320-332).

69. In Khodorkovskiy and Lebedev v. Russia, 2013, the applicants, who were wealthy businessmen and senior managers of the Yukos oil company, were prosecuted on charges of fraud and tax evasion. They maintained that their prosecution was driven by political motives. Having regard to the applicants’ political status and other circumstances surrounding the case, the Court was prepared to accept that some political groups or government officials had had their own reasons to push for the applicants’ prosecution. It did not exclude the possibility that in limiting some of the applicants’ rights throughout the proceedings some of the authorities or State officials might have had a “hidden agenda”. However, the Court could not agree with the applicants’ “sweeping claim that their whole case was a travesty of justice”. Possible elements of “improper motivation” or a “mixed intent” behind the applicants’ prosecution were insufficient to conclude that they would not have been convicted otherwise. The Court therefore found no breach of Article 18 as the alleged ulterior purpose was not predominant (§§ 906-908).
IV. Issues of proof and evidence

A. General evidentiary standards

70. When deciding a case under Article 18, the Court no longer applies the general presumption of good faith on the part of national authorities or any special rules with regard to proof (contrast Khodorkovskyi v. Russia, 2011, §§ 255-256 and 260; and Khodorkovskiy and Lebedev v. Russia, 2013, § 899). Instead, it adheres to its usual approach to proof (Merabishvili v. Georgia [GC], 2017, § 310, and Navalny v. Russia [GC], 2018, § 165), rather than to the stricter standard that it had applied under this Article in a number of previous cases.

71. The first aspect of that approach is that, as a general rule, the burden of proof is not borne by one or other party because the Court examines all the material before it irrespective of its origin, and can obtain material of its own motion. On a number of occasions, the Court has recognised that strictly following the approach whereby the burden of proof in relation to an allegation lies on the party which makes it is not possible, notably in instances where the applicants face specific evidentiary difficulties (Merabishvili v. Georgia [GC], 2017, § 311; Ireland v. the United Kingdom, 1978, §§ 160-161; Cyprus v. Turkey [GC], 2001, §§ 112-113 and 115; Georgia v. Russia (I) [GC], 2014, §§ 93 and 95; Navalny v. Russia [GC], 2018, § 165; and Korban v. Ukraine, 2019, § 215).

72. The Court relies on the evidence which the parties adduce spontaneously, although it can of its own motion ask applicants or respondent Governments to provide material which can corroborate or refute the allegations made before it. If the respondent Government in question do not accede to such a request, the Court can draw inferences if they do not duly account for their failure or refusal (Janowiec and Others v. Russia [GC], 2013, § 202). Rule 44C § 1 of the Rules of Court allows it also to combine such inferences with contextual factors (Merabishvili v. Georgia [GC], 2017, § 312, and Navalny v. Russia [GC], 2018, § 165).

73. The possibility for the Court to draw inferences from the respondent Government’s conduct in the proceedings before it, especially in situations where the State alone has access to information capable of corroborating or refuting the applicant’s allegations, is of particular relevance in relation to allegations of ulterior purpose (see, among other authorities, Timurtaş v. Turkey, 2000, § 66; Aktaş v. Turkey, 2003, § 272; El-Masri v. the former Yugoslav Republic of Macedonia [GC], 2012, § 152; Merabishvili v. Georgia [GC], 2017, § 313; and Navalny v. Russia [GC], 2018, § 165).

74. The second aspect of the Court’s approach is that the standard of proof before it is “beyond reasonable doubt”. That standard is not co-extensive with that of the national legal systems which employ it. First, such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. Secondly, the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (Merabishvili v. Georgia [GC], 2017, § 314; Navalny v. Russia [GC], 2018, § 165; and Korban v. Ukraine, 2019, § 215).

75. The third aspect of the Court’s approach is that the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. When assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all the evidence, including such inferences as may flow from the facts and the parties’ submissions (Nachova and Others v. Bulgaria [GC], 2005, § 147). It is sensitive to any potential evidentiary difficulties encountered by a party (Merabishvili v. Georgia [GC], 2017, § 315; Navalny v. Russia [GC], 2018, § 165; and Korban v. Ukraїne, 2019, § 215).

76. The Court will not restrict itself to direct proof in relation to complaints under Article 18 or apply a special standard of proof to such allegations (Merabishvili v. Georgia [GC], 2017, §§ 282 and 310; contrast Khodorkovskyi v. Russia, 2011, § 260; Dochnal v. Poland, 2012, § 116; Nastase v. Romania (dec.), 2014, § 109; OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, § 603; Bîrsan v. Romania
77. Finally, circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts (Ilgar Mammadov v. Azerbaijan, 2014, § 142; Rasul Jafarov v. Azerbaijan, 2016, § 158; Merabishvili v. Georgia [GC], 2017, § 317; and Korban v. Ukraine, 2019, § 215).

78. When examining a sequence of events, the Court may analyse whether, viewed as a whole, they disclose a certain pattern indicative of specific and personal targeting (Navalnyy v. Russia [GC], 2018, § 167-170). The Court may also have regard to its own findings in previous related cases brought by the same applicant. The authorities’ awareness at the material time that the contested practice was incompatible with Convention standards, is a relevant factor to consider (Navalnyy v. Russia [GC], 2018, § 171).

79. The Court may also analyse whether a series of similar cases brought against the same State, viewed as a whole, disclose a certain pattern of misuse of power targeting specific groups, such as government critics, opposition politicians, civil society activists and/or human-rights defenders (Aliyev v. Azerbaijan, 2018, § 223; Natig Jafarov v. Azerbaijan, 2019, §§ 64-65; Ibrahimov and Mammadov v. Azerbaijan, 2020, §§151-152; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, §§ 113-114; and Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 187-188).

80. Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account, in particular, to shed light on the facts, or to corroborate findings made by the Court (Baka v. Hungary [GC], 2016, § 148; Merabishvili v. Georgia [GC], 2017, § 317; Mammadli v. Azerbaijan, 2018, § 95; Rashad Hasanov and Others v. Azerbaijan, 2018, § 118; Aliyev v. Azerbaijan, 2018, § 205; Navalnyy v. Russia [GC], 2018, § 172; Aliyev v. Azerbaijan, 2018, § 212; Rasul Jafarov v. Azerbaijan, 2016, § 159; and Mammadli v. Azerbaijan, 2018, § 99).

81. Where certain factual details of a given case could be interpreted as possible indicators of an ulterior purpose and had even been perceived as such by political parties, mass media and/or civil society at the material time, the Court, while bearing that in mind, will focus its assessment on the well-foundedness of the specific arguments raised by the applicant in support of his complaint under Article 18 (Korban v. Ukraine, 2019, §§ 218-224). The political process and adjudicative process being fundamentally different, the Court will base its decision on “evidence in the legal sense”, in accordance with the above criteria (Merabishvili v. Georgia [GC], 2017, §§ 310-317) and its own assessment of the specific relevant facts (see Kavala v. Turkey, 2019, § 217; Khodorkovskiy v. Russia, 2011, § 259; Ilgar Mammadov v. Azerbaijan, 2014, § 140; and Rasul Jafarov v. Azerbaijan, 2016, § 155).

82. Where an impugned restriction is based on a domestic legislative provision, which, though lacking a legitimate aim and/or requisite justification, is applied indiscriminately to all its addressees, the Court will be unable to find, in the fact of its application in a given case, evidence of an ulterior motive as alleged by the applicants (Khodorkovskiy and Lebedev v. Russia (no. 2), 2020, §§ 624-625).

B. Specific issues of pre-trial detention and criminal prosecution

83. When it comes to allegations of ulterior purpose in the context of criminal prosecution, it is hard to divorce the pre-trial detention from the criminal proceedings. The Court has previously acknowledged its competence to examine allegations of political or other ulterior motives for pre-trial detention in so far as it may dissociate pre-trial detention from the criminal proceedings within which such detention was ordered (Navalnyy v. Russia (no. 2), 2019, § 85; Ilgar Mammadov
v. Azerbaijan (infringement proceedings) [GC], 2019, § 185; Lutsenko v. Ukraine, 2012, § 108; Tymoshenko v. Ukraine, 2013, § 298; and Tchankotadze v. Georgia, 2016, § 114). At the same time, where it is established that the applicant was charged and placed in pre-trial detention solely on the basis of improper reasons, the Court’s finding of a violation of Article 18 in conjunction with Article 5 in this respect vitiates any subsequent action resulting from the imposition of the abusive charges, including the applicant’s conviction and imprisonment (Ilgar Mammadov v. Azerbaijan (infringement proceedings) [GC], 2019, § 189).

84. Where an allegation is made under Article 18 in conjunction with Article 5, the Court focuses its scrutiny on the court decisions ordering and/or extending pre-trial detention. It can also take into account the manner in which the impugned criminal proceedings were conducted (Merabishvili v. Georgia [GC], 2017, §§ 320 and 325).

C. Allegations of political purposes

85. When examining allegations of political purposes in the context of criminal prosecution, the Court has regard to the following factors:


- whether the prosecution and judicial authorities themselves were driven by ulterior motives (Tchankotadze v. Georgia, 2016, § 114; Merabishvili v. Georgia [GC], 2017, § 323; and Batiashvili v. Georgia, 2019, § 102);

- whether there is evidence that the courts were not sufficiently independent from the executive authorities (Merabishvili v. Georgia [GC], 2017, § 324, and Batiashvili v. Georgia, 2019, § 102);

- the timing and the manner in which the applicant’s arrest was carried out and/or in which the criminal proceedings or judicial review of pre-trial detention were conducted (Merabishvili v. Georgia [GC], 2017, § 325; Navalnyy v. Russia [GC], 2018, §§ 167-168; Batiashvili v. Georgia, 2019, § 102; Korban v. Ukraine, 2019, § 218; Natig Jafarov v. Azerbaijan, 2019, § 68; Kavala v. Turkey, 2019, §§ 222-229; and Ibrahimov and Mammadov v. Azerbaijan, 2020, § 153);

- whether the charges against the applicant were genuine and amounted to a “reasonable suspicion” within the meaning of Article 5 § 1 (c) (Khodorkovskiy v. Russia, 2011, § 258; Khodorkovskiy and Lebedev v. Russia, 2013, § 908; Dochnal v. Poland, 2012, § 111; Merabishvili v. Georgia [GC], 2017, § 318; Korban v. Ukraine, 2019, § 216; Aliyev v. Azerbaijan, 2018, § 209; Natig Jafarov v. Azerbaijan, 2019, § 68; Kavala v. Turkey, 2019, § 218; Ibrahimov and Mammadov v. Azerbaijan, 2020, § 154; and Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 111); where the charges are based on facts that cannot be reasonably considered as behaviour criminalised under domestic law, especially where they are related to the exercise of the rights under the Convention by the applicant, such circumstances are particularly relevant in the context of a complaint under Article 18 and can be considered as corroborating an allegation of an ulterior purpose (Kavala v. Turkey, 2019, §§ 220 and 224);
- whether the charges against the applicant concerned his/her political activities or common criminal-law offences (Khodorkovskiy and Lebedev v. Russia, 2013, § 906; Merabishvili v. Georgia [GC], 2017, §320);
- whether domestic judicial decisions were well-reasoned and based on the relevant provisions of domestic law (Nastase v. Romania (dec.), 2014, § 107);
- whether the preventive measures and accompanying restrictions imposed on the applicant were in sufficient connection with the objectives of criminal justice and whether their duration appeared appropriate to the nature of the criminal charges at stake (Navalnyy v. Russia (no. 2), 2019, § 95).

86. The fact that a suspect’s political opponents or business competitors might directly or indirectly benefit from his/her conviction should not prevent the authorities from prosecuting such a person if there are genuine charges against him/her. In other words, high political status does not grant immunity (Khodorkovskiy v. Russia, 2011, § 258; Khodorkovskiy and Lebedev v. Russia, 2013, § 903).

87. Although criminal prosecutions initiated against politicians and high-ranking officials after a change of power could suggest a wish to eliminate or harm them or their political parties, they could equally reflect a desire to deal with alleged wrongdoings under a previous government whose members could not be held to account while in power (Merabishvili v. Georgia [GC], 2017, § 323; Khodorkovskiy and Lebedev v. Russia, 2013, § 903). The mere fact that a politician is criminally prosecuted, even during an electoral campaign, is not automatically in breach of his/her right to run for office (Uspaskich v. Lithuania, 2016, §§ 90-100). There is no right as such under the Convention not to be criminally prosecuted (Merabishvili v. Georgia [GC], 2017, § 320).

88. The Court has regard to the applicant’s specific status and activities (Navalnyy v. Russia [GC], 2018, § 174; Aliyev v. Azerbaijan, 2018, §§ 208; Kavala v. Turkey, 2019, § 231; Natig Jafarov v. Azerbaijan, 2019, § 66; Ibrahimov and Mammadov v. Azerbaijan, 2020, § 153; Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 115; Yunusova and Yunusov v. Azerbaijan (no. 2), 2020, § 189; and Khodorkovskiy v. Russia, 2011, § 257). At the same time, the absence of a particular political status, such as that of an opposition leader or a public official, does not rule out political motivation behind the contested measures. The Court has established political purposes in cases concerning detention of well-known civil society activists and NGO leaders, critical of elections or involved in protests against the government (Mammadli v. Azerbaijan, 2018, § 103, and Rashad Hasanov and Others v. Azerbaijan, 2018, § 124).

89. Statements by politicians and government officials can only be seen as proof of an ulterior purpose behind a judicial decision if there is evidence that the courts were not sufficiently independent from the executive authorities (Tchankotadze v. Georgia, 2016, § 114; Merabishvili v. Georgia [GC], 2017, § 324; and Batishvili v. Georgia, 2019, § 102). Seen together with other factors undermining the prosecution’s credibility, such statements can corroborate allegations of an ulterior purpose, especially where there is a correlation between, on the one hand, the wording of the charges and the content of the impugned statements, on the other (Kavala v. Turkey, 2019, §§ 229-230).

90. Domestic judgments refusing extradition do not necessarily determine the Court’s assessment of the existence of political motivation behind criminal prosecution, as the extradition courts in essence assess a future risk, whereas the Court is concerned with past facts; that colours their respective assessment of inconclusive contextual evidence (Merabishvili v. Georgia [GC], 2017, § 330).
D. Evidence leading to a finding of a breach of Article 18

1. Direct evidence

91. In the following cases, the Court based its findings of a breach of Article 18 in conjunction with Article 5 on direct written evidence of an ulterior purpose. These cases do not belong to any established pattern of misuse of power.

92. In Gusinskiy v. Russia, 2004, the applicant, a wealthy businessman, was charged and placed in pre-trial detention in order to pressurise him into selling his media company to a State-owned company. Direct proof flowed from a written agreement, endorsed by a government minister, linking the dropping of the charges against the applicant to the sale of the company, and from the terms of the decision discontinuing the criminal proceedings against him, which referred to that agreement; the respondent Government had not sought to deny that link (§§ 73-78).

93. In Lutsenko v. Ukraine, 2012, the Court relied on the arguments in the investigator’s request to place the applicant in pre-trial detention that, by talking to the media, he was trying to distort public opinion, discredit the prosecuting authorities and influence his upcoming trial. For the Court, that showed that the detention was aimed at punishing the applicant for publicly asserting his innocence (§§ 26 and 108-109).

94. In Tymoshenko v. Ukraine, 2013, the Court relied on the statements in the prosecution’s request to place the applicant in pre-trial detention and in the corresponding court order which showed that the purpose had been to punish her for disrespect towards the court and perceived obstructive conduct during hearings (§§ 30-31 and 299).

2. Circumstantial evidence

95. In the following cases the Court found a breach of Article 18 in conjunction with Articles 5 and 8 or 11, basing itself on contextual evidence of ulterior purpose.

a. Cases not concerning an established pattern of misuse of power

96. In Cebotari v. Moldova, 2007, the Court found that the head of a State-owned company had been placed in pre-trial detention on fabricated charges in order to put pressure on him with a view to hindering a private company, Oferta Plus, with which he was linked from pursuing its application to the Court. The Court based that finding on the fact that the materials in the case could not lead an objective observer reasonably to believe that the applicant could have committed the offence in relation to which he had been detained. The Court was also influenced by the context of the case (§§ 50-53), in particular,

- its findings in the case of Oferta Plus S.R.L. v. Moldova, 2006, regarding the breach of the company’s right of petition (§§ 137-143);
- the fact that the charges against the applicant were indissociable from those against the Chief Executive Officer of Oferta Plus and that they were closely connected with the subject matter of the application of Oferta Plus to the Court (Oferta Plus S.R.L. v. Moldova, 2006, § 137);
- the fact that the criminal proceedings against the applicant and Oferta Plus’s Chief Executive Officer and their detention coincided in time, were initiated and dealt with by the same investigators and couched in similar terms;
- the fact that the charges were brought for the first time after the Moldovan Government had been informed about of Oferta Plus’s application to the Court and that those charges, which were discontinued in the meantime, were reactivated shortly after the communication of the case to the Government (Oferta Plus S.R.L. v. Moldova, 2006, § 142).
97. In Merabishvili v. Georgia [GC], 2017, the Court found a violation of Article 18 in conjunction with Article 5 § 1 because, during the course of the applicant’s pre-trial detention, its predominant purpose had changed from one that was Convention compliant to the ulterior purpose of pressuring him into providing information. This was shown by the incident of his covert removal from his cell to be questioned by the Chief Prosecutor about the death of a former Prime Minister and about the financial activities of the former President.

98. Some of the factors which led the Court to that conclusion related to the time of the incident: the reasons for keeping the applicant in pre-trial detention appeared to have receded; the former President, who had become the target of several criminal investigations, had just left Georgia following the end of his term of office; the investigation into the former Prime Minister’s death had apparently not made significant progress.

99. Other factors showed the considerable importance of the questions regarding the two men for the authorities. Thus, the Government had stated at the hearing before the Grand Chamber that there was still a “huge question” for the applicant to answer on this point. The prosecuting authorities had had the power to drop all the charges against the applicant at any point without judicial control and had promised to do so if he provided the requested information, so the courts would have had to discontinue the criminal proceedings against him. The applicant had been taken in a covert and apparently irregular manner, in a clandestine operation carried out in the middle of the night, to meet with an individual who had been appointed to his post three weeks previously. The authorities’ initial reaction in that respect had been to issue firm denials, and the ensuing inquiry and investigation had been marred by a series of omissions from which it could be inferred that the authorities had been eager that the matter should not come to light: the main protagonists had not been interviewed during the initial inquiry but only some three years after the events, and the crucial evidence in the case – the footage from the prison surveillance cameras – had not been recovered (Merabishvili v. Georgia [GC], 2017, §§ 352-353).

100. In Kavala v. Turkey, 2019, the Court found a violation of Article 18 in that the applicant’s pre-trial detention had served only the ulterior purpose of silencing him as a human-rights defender and NGO activist. The proof followed from the combination of case-specific facts, particularly the timing of the arrest and the charges. In the first place, the Court considered it crucial that no plausible explanation had been advanced for a considerable lapse of time between the events forming the basis for the applicant’s detention and the court decisions to detain him: more than four years after the mass protests and more than a year after the attempted coup d’état. Importantly, the bulk of the evidence relied upon by the prosecutor had already been collected well in advance of the date of the arrest. Secondly, the contested measures had not been justified by reasonable suspicions based on an objective assessment of the alleged acts, which led the Court to find a breach of Article 5 § 1 taken alone. Moreover, and it was particularly relevant in the context of Article 18, those measures had been essentially based on facts that could not be reasonably considered as behaviour criminalised under domestic law and were largely related to the exercise of the rights guaranteed by Articles 10 and 11 of the Convention. The bill of indictment had also referred to ordinary and legitimate activities on the part of a human-rights defender and the leader of an NGO, without indicating their relevance to the charges of triggering an insurrection. Nor had it clearly specified the facts or actions on which the applicant’s criminal liability had been based. Thirdly, from the outset, the investigating authorities had not been primarily interested in the applicant’s presumed involvement in the above events. In particular, during the police interview, the applicant had been asked many irrelevant questions. Before being officially charged, the applicant had been kept in pre-trial detention for more than a year, without any significant investigative acts being carried out. Lastly, there was a correlation between, on the one hand, the wording of the charges and, on the other, the public accusations against him by the President some three months previously. Having regard to all the above factors taken together, as well as to the international concerns expressed about a wider campaign of repression targeting human-rights defenders in Turkey, the Court found
that the prosecution’s credibility had been undermined such as to corroborate the applicant’s allegations of an ulterior purpose. As the contested measures had affected not merely the applicant or human-rights defenders/NGO activists, but the very essence of democracy, the ulterior purpose of silencing the applicant had attained significant gravity, especially in the light of the particular role of human-rights defenders and NGOs (§§ 220-232).

b. Pattern indicative of specific and personal targeting

101. The case of Navalnyy v. Russia [GC], 2018, concerned seven occasions when the applicant, one of the most significant opposition figures in Russia, was arrested and prosecuted on account of his alleged participation in unauthorised but peaceful public gatherings. Focusing its analysis on two of those episodes, the Court found a violation of Article 18 taken in conjunction with Articles 5 and 11, since the impugned restrictions, while not pursuing any legitimate aim under the latter substantive provisions, had pursued solely the ulterior purpose of suppressing political pluralism. That finding was based, particularly, on the sequence and pattern of the events viewed as a whole and against the broader context of the Russian authorities’ attempts at the material time to bring the opposition’s political activity under control.

102. In the first place, the sequence of arrests disclosed a certain pattern: the applicant had been arrested seven times in a relatively short period (two years) and in a virtually identical manner. The pretexts for the arrests had become progressively more implausible, whereas the degree of potential or actual disorder caused by the applicant had diminished. In particular, although in the first four episodes the applicant was one of the leaders of the gatherings, he had not played any special role in the subsequent episodes. That pattern suggested that the predominant purpose of the measures taken against the applicant had indeed changed over the period under examination.

103. Secondly, in light of the wider context, the authorities had become increasingly aware during the seven episodes that the impugned practices were incompatible with the Convention (see, notably, the Court’s similar findings with regard to an earlier demonstration in Navalnyy and Yashin v. Russia and with regard to the parallel criminal proceedings against the applicant in Navalnyy and Ofitserov v. Russia and Navalnyye v. Russia).

104. Thirdly, there was “converging contextual evidence” corroborating the view that the authorities were becoming increasingly severe in their response to the conduct of the applicant as an opposition leader and of other political activists and, indeed, in their approach to public assemblies of a political nature. In particular, legislative changes (examined in and adopted since Lashmankin and Others v. Russia) increased and expanded liability for a breach of the procedure for conducting public events and were thus indicative of a continuous trend of restricting freedom of assembly, about which concerns had been expressed by several Council of Europe bodies.

105. Fourthly, considering the nature and degree of reprehensibility of the alleged ulterior purpose, the Court found that it would attain significant gravity. Indeed, the restriction in question, which targeted an opposition politician committed to playing an important public function, would have affected not merely the applicant alone, or his fellow activists and supporters, but the very essence of democracy. It had thus been aimed at suppressing political pluralism (§§ 167-175).

106. In Navalnyy v. Russia (no. 2), 2019, the Court relied on the same contextual evidence as in Navalnyy v. Russia [GC], 2018, to examine the applicant’s house arrest and accompanying ban on access to means of communication, which had been imposed immediately after the last arrest in the sequence of the seven episodes in issue in the above Grand Chamber judgment. The impugned measures, increasingly incongruous and lacking connection to the objectives of criminal justice, also led the Court to a finding of violation of Articles 5 and 10 taken alone. Moreover, their duration (10 months) was found inappropriate to the nature of the criminal charges at stake: in particular, no such measures had been applied to the main accused in the relevant criminal case. In line with the findings in the above Grand Chamber judgment, the Court concluded that these measures had
pursued solely the ulterior purpose of suppressing political pluralism, in breach of Article 18 in conjunction with Article 5 of the Convention.

c. Pattern of misuse of power targeting specific groups

107. In the following cases v. Azerbaijan, disclosing a pattern of arbitrary arrest and detention of government critics, civil society activists, opposition politicians and human-rights defenders, proof of an ulterior purpose – to silence or punish the applicants for their activities and to impede the latter – was drawn from a juxtaposition of the lack of “reasonable suspicion” within the meaning of Article 5 § 1 (c) with a combination of relevant case-specific facts or contextual factors.

108. In Ilgar Mammadov v. Azerbaijan, 2014, these case-specific facts included a close chronological correlation between the applicant’s blog entries criticising the authorities and spreading information they were trying to suppress, the authorities’ public statement denouncing them, the charges, and the arrest (§§ 141-143).

109. In Yunusova and Yunusov v. Azerbaijan (no. 2), 2020 (§§ 191-193), Khadija Ismayilova v. Azerbaijan (no. 2), 2020, § 118; Natig Jafarov v. Azerbaijan, 2019 (§ 67), Aliyev v. Azerbaijan, 2018 (§§ 208-215), Rasul Jafarov v. Azerbaijan, 2016 (§§ 156-162) and Mammadli v. Azerbaijan, 2018 (§§ 98-104), among the general relevant factors were: the increasingly harsh regulation of NGOs and their funding in Azerbaijan, allegations by high-ranking officials and the pro-government media that activists such as the applicant were foreign agents and traitors, and the contemporaneous detention and criminal prosecution of other such activists. In addition, the Court took account of the specific features relating to the applicants’ activities and/or the chain of the impugned events.

110. In Aliyev v. Azerbaijan, 2018, the Court attached particular importance to the applicant’s special role as a human rights lawyer and legal representative before the Court in a large number of cases. During the search at his home and office, which had been conducted arbitrarily, the authorities had not only seized documents related to his NGO’s activities, but also taken case files covered by lawyer-client confidentiality, including those related to the applications pending before the Court, in disregard of legal professional privilege. As a result, the applicant had been prevented from conducting his activities in any meaningful way (§§ 208, 211 and 213).

111. In Mammadli v. Azerbaijan, 2018, the Court attached weight to the timing of the institution of criminal proceedings, that is, only a few days after the publication of the report critical of the presidential election by the applicant’s NGO. It also took note of the fact that the charges against the applicant specifically referred to the grants which had been awarded for the purpose of financing the monitoring of the 2013 presidential election (§ 102).

112. In Natig Jafarov v. Azerbaijan, 2019, the Court attached particular weight to the timing of the institution of criminal proceedings and the whole chain of events: the applicant’s arrest during the active phase of the registration process for the constitutional referendum campaign and his subsequent release shortly after his political movement had announced its decision not to participate in the campaign because of the arrests of its several members. Regarding the nature and degree of reprehensibility of the ulterior purpose, the Court noted that the intimidation of a campaigning member of the opposition in the run-up to the constitutional referendum had serious potential to discourage opposition supporters from participating in open political debate and thus affected not only the applicant or his fellow opposition activists and supporters, but also the very essence of democracy (§ 68-69).

113. In Khadija Ismayilova v. Azerbaijan (no. 2), 2020, the Court had particular regard to the chain of the events: the applicant, an investigative journalist, was arrested two days after a public statement by a senior official to the effect that her activities were tantamount to treason and working for the foreign secret services. Initially detained on the basis of a false claim obtained under coercion, she
was charged with additional crimes as soon as the prosecuting authorities’ actions were about to be exposed (§§ 116-117).

114. In *Rashad Hasanov and Others v. Azerbaijan*, 2018, the Court likewise attached weight to the timing of the institution of criminal proceedings against the applicants, that is, shortly after a series of demonstrations against the government which their NGO – NIDA – had organised and conducted. In this connection, the Court took note of the special treatment given to their case, which had been investigated not by the police, but the Serious Crimes Department of the Prosecutor General’s Office with the involvement of the Ministry of National Security. It was clear from the joint press statement, issued by those authorities after the arrests of a number of NIDA members found to be in possession of Molotov cocktails, that from the outset they had targeted NIDA and linked the arrests with the NGO’s activities. Significantly, in that statement, without any reason or evidence, NIDA had been described as a “destructive force” and its activities qualified as illegal, only a few days before the applicants – its four board members – were arrested. Absent any “reasonable suspicion” against them and in the general context of a crack-down on civil society and contemporaneous arrests of other activists, the Court found sufficient basis to conclude that their detention had pursued the alleged ulterior purpose (§§ 122-125).

115. In *Ibrahimov and Mammadov v. Azerbaijan*, 2020, the Court examined another example of targeting the NIDA NGO, whose members had been remanded in custody only some hours after painting anti-government graffiti on the statue of the former president, and charged with drug trafficking in the absence of a “reasonable suspicion”. Relying on the general context and the specific features established in *Rashad Hasanov and Others v. Azerbaijan*, 2018, the Court accepted that the impugned measures had been intended to punish the applicants for that conduct (§§ 151-157).

116. Importantly, in *Mammadli v. Azerbaijan*, 2018 (§ 103), and *Rashad Hasanov and Others v. Azerbaijan*, 2018 (§ 124), in light of the applicants’ status as civil society activists and other relevant contextual factors mentioned above, the Court rejected the Government’s argument that their prosecution could not be politically motivated because they were not opposition leaders or public officials.

**E. Unsubstantiated complaints**

117. In the following cases, the Court was not satisfied there was sufficient evidence to conclude that the State authorities had pursued purposes other than those prescribed in the Convention, or that such purposes had been predominant.

118. In *Merabishvili v. Georgia* [GC], 2017, the Court was unable to find that the alleged ulterior purpose of removing the applicant from the political scene was the predominant purpose of his pre-trial detention. It had regard to the broader political context of the case, as well as the manner in which the criminal proceedings had been conducted. Firstly, the prosecution of various high officials from the applicant’s political party and related statements by the Government officials could not in themselves lead to the conclusion that the courts deciding on the applicant’s pre-trial detention had been driven by a political purpose, absent evidence that the courts were not sufficiently independent from the executive (§ 324). Secondly, the duration of the trial had not been unreasonably long, and the place of the proceedings (outside the capital) was not redolent of forum shopping. Thirdly, the shortcomings in the court decisions from the point of view of Article 5 § 3 were not in themselves proof of a political purpose. Fourthly, the fact that courts of other member States had turned down requests for the extradition of other former officials from the applicant’s party on grounds that the criminal prosecutions against them were politically motivated did not necessarily determine the Court’s assessment of that point. The facts of those cases had not been identical. Moreover, the extradition courts had been assessing a future risk, whereas the Court was concerned with past facts (§§ 322-332).
119. In *Kamma v. the Netherlands* (Commission’s report, 1974), the applicant had been detained on extortion charges and the police had used his period in custody to question him about his alleged involvement in a murder. The Commission found no breach of Article 18, considering that the police had been entitled to proceed as they had, and that the detention had not prejudiced the applicant’s position in the murder case (pp. 10-13).

120. In *Ramishvili and Kokhreidze v. Georgia* (dec.), 2007, the applicants, who were the co-founders and shareholders of a television channel, were remanded in custody on charges of extortion for demanding payment in exchange for not disclosing an embarrassing documentary about an allegedly corrupt parliamentarian. The Court was unable to find that their detention pursued, as claimed, the ulterior purpose of silencing their television channel and putting an end to their critical journalistic opinions in order to save the reputation of the parliamentarian concerned and that of the ruling party. Apart from referring to the general human rights problems in Georgia, the applicants did not point to specific facts in their particular case supporting the allegation of an ulterior purpose. On the other hand, the Court took note of a number of factors pointing to the absence of the alleged ulterior purpose. In particular, the charges against the applicants did not concern their journalistic activities. Unlike the position in *Gusinsky v. Russia*, 2004, the Government had not offered them any kind of bargain in exchange for discontinuing the criminal proceedings. Their channel continued to broadcast and the controversial documentary was aired even after they had been detained. Moreover, the Georgian Parliament had conducted its own investigation into the parliamentarian’s commercial activities, after which he resigned. The applicants’ complaint under Article 18 in conjunction with Article 5 was therefore rejected as unsubstantiated.

121. In *Dochnal v. Poland*, 2012, the applicant, a businessman and lobbyist, was placed in pre-trial detention on charges of tax evasion, money-laundering and offering a bribe to a Member of Parliament. These charges amounted to a “reasonable suspicion” and his detention therefore pursued a purpose prescribed by Article 5 § 1 (c). The Court acknowledged that his case might raise a certain degree of suspicion as to whether the real intent of the authorities was to extract further depositions from him regarding various sensitive political matters. However, the applicant’s submissions in respect of an alleged ulterior purpose were limited to an assertion that the authorities had kept him in detention in order to persecute and abuse him. His complaint under Article 18 in conjunction with Article 5 § 1 was therefore rejected as manifestly ill-founded (§§ 115-116).

122. In *Nastase v. Romania* (dec.), 2014, the applicant, a former Prime Minister and chairman of a political party, alleged that his conviction of a number of corruption offences was politically motivated. To support his claim, he pointed to the statements in the judgment that he “personified the corruption of political class” and that an “exemplary sentence” of imprisonment was thus called for (§§ 34 and 106). For the Court, however, such statements were the consequence of the domestic court’s finding in respect of his criminal liability rather than the expression of an ulterior motive. Moreover, the domestic court judgments were well-reasoned and based on the relevant provisions of domestic law. Even though the applicant’s high political status might give rise to a certain suspicion as to the authorities’ real interest in his conviction, his allegations in this respect were quite vague and did not refer to any concrete evidence of misuse of power. The Court therefore rejected as manifestly ill-founded the applicant’s complaint under Article 18 in conjunction with Article 6 § 1 (§§ 108-109).

123. In *Tchankotadze v. Georgia*, 2016, the applicant, a high-ranking civil servant, was prosecuted for abuse of power and remanded in custody, shortly after Mr Saakashvili was elected President of Georgia. During his presidential election campaign, the latter publicly threatened that the applicant would be “jailed”. The Court rejected as manifestly ill-founded the applicant’s complaint under Article 18 in conjunction with Article 5 as the impugned threat was insufficient to find an ulterior purpose behind his prosecution and related pre-trial detention. The Court was unable, in the absence of any other additional evidence or arguments, to establish that the initiation of the
criminal case was necessarily linked to that threat, or that President Saakashvili had in any other manner unduly influenced the unfolding of the case. Moreover, there was nothing to suggest that the prosecution or judicial authorities themselves had shown, either through official or unofficial channels, the existence of any ulterior motives (§§ 114-115).

124. In Batiashvili v. Georgia, 2019, the applicant, a prominent opposition figure, was remanded in custody in connection with criminal proceedings over his allegedly helping an armed group in carrying out a rebellion. Referring to the statements of the high-level political figures made immediately before and after his arrest, he claimed that the purpose behind his pre-trial detention had been to remove him from the political scene. For the Court, however, these elements, as such, could not lead to the conclusion that the courts had been driven by the ulterior purpose, in the absence of evidence that they had not been sufficiently independent from the executive authorities. Having regard to the speedy and reasoned manner in which the review proceedings against the applicant had been conducted, the Court was unable to establish that there was an ulterior motive behind his pre-trial detention, which was, moreover, found to have been carried out for a purpose prescribed under Article 5 § 1 (c) (§§ 101-103).

125. In Korban v. Ukraine, 2019, when dealing with the allegations of politically motivated deprivation of liberty of a well-known politician, the Court accepted that there had been a reasonable suspicion of his having committed an offence. However, while criminal proceedings were pending against the applicant for more than a year, all of a sudden and for no apparent reason, his arrest had taken place with the involvement of a special forces unit and his case had become a matter of particular urgency and zeal for the prosecuting authorities. While those events had been broadly perceived by political parties, mass media and civil society as selective justice and could indeed be interpreted as possible indices of an ulterior purpose, the Court focused its examination on the specific arguments raised by the applicant in support of his complaint under Article 18. None of them allowed the Court to identify possible ulterior motives behind his prosecution, let alone find them predominant. In the first place, while the applicant was a member of the political team of the then head of a regional state administration who had resigned allegedly following a conflict with the then President of Ukraine, neither that official nor his other supporters had raised any complaints of political persecution. Secondly, it appeared unlikely that the candidate from the President’s party, who had won the parliamentary elections, would post factum seek to take revenge on the applicant, who had obtained less than half of his percentage of votes. Moreover, while the applicant claimed that the election results had been rigged, he had not lodged a complaint to that effect under Article 3 of Protocol No. 1. Thirdly, there was no information of any attempts to stifle voices critical of the then President or the government. Fourthly, the criminal proceedings against the applicant had been instituted about a year prior to the creation of his party. While the latter had been successful in the local elections, two other parties, which were unrelated to the then President and had obtained even better results, had made no allegations of persecution. The Court therefore found no violation of Article 18 in conjunction with Article 5 (§§ 216-225).

126. The cases of OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, Khodorkovskiy v. Russia, 2011, and Khodorkovskiy and Lebedev v. Russia, 2013, were brought respectively by one of the biggest Russian oil producers and its senior managers and major shareholders, who were among the richest men in Russia. Mr Khodorkovskiy was also politically active: he allocated significant funds to support opposition parties. Both managers were detained and subsequently convicted of tax evasion and fraud. During the same period, tax and enforcement proceedings were brought against the Yukos company, which was put into liquidation. Its demise resulted from the uncompromising execution of tax debts and disproportinate bailiffs’ fees.

127. The Court accepted that the circumstances surrounding these cases could be interpreted as supporting the applicants’ claim of improper motives: the authorities were trying to reduce the political influence of “oligarchs” and Yukos’s business projects ran counter to the petroleum policy of the State, which was one of the main beneficiaries of its dismantlement (Khodorkovskiy and Lebedev...
v. Russia, 2013, § 910; OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, §§ 237-238). Nevertheless, the Court was not satisfied that the impugned proceedings chiefly pursued, as claimed, the ulterior purpose of removing Mr Khodorkovskiy from the political scene and enabling the State to appropriate the assets of Yukos (Khodorkovskiy v. Russia, 2011, § 260; OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, § 665; Khodorkovskiy and Lebedev v. Russia, 2013, § 908).

128. The applicants relied on contextual evidence and authoritative opinions by political institutions, non-governmental organisations or public figures to support their allegations under Article 18. The Court held that they had failed to produce “incontrovertible and direct proof” (Khodorkovskiy v. Russia, 2011, § 260; OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, § 663; Khodorkovskiy and Lebedev v. Russia, 2013, § 902). However, in Merabishvili v. Georgia [GC], 2017, the Court clarified that it does not restrict itself to direct proof in relation to such complaints and that the burden of proof is not borne by one or the other party (§§ 311 and 316). These cases are therefore to be read in light of this clarification. The Court also relied on the following arguments.

129. First, the authorities’ perception of Mr Khodorkovskiy as a serious political opponent and the benefit accruing to a State-owned company as a result of Yukos’s demise were not enough to establish a breach of Article 18 because the criminal prosecution of anyone with such a high profile would benefit his opponents. Moreover, this consideration should not prevent the authorities from prosecuting such a person if there are serious charges against him: “high political status does not grant immunity” (Khodorkovskiy v. Russia, 2011, §§ 257-58; Khodorkovskiy and Lebedev v. Russia, 2013, § 903).

130. Second, the charges against the Yukos managers had been genuine and serious, their criminal case had a “healthy core” (Khodorkovskiy v. Russia, 2011, § 258; Khodorkovskiy and Lebedev v. Russia, 2013, § 908). The authorities had also legitimately acted to counter tax evasion by Yukos (OAO Neftyanaya Kompaniya Yukos v. Russia, 2011, § 664). The Court rejected the company’s claim that its debt had been recognised as a result of an unforeseeable, unlawful and arbitrary interpretation of domestic law (ibid., §§ 605, 616 and 664).

131. Third, none of the accusations against the Yukos managers concerned their political activities – they had been prosecuted for common criminal offences (Khodorkovskiy and Lebedev v. Russia, 2013, § 906).

132. Finally, the rulings of courts of other member States which had refused to extradite the applicants’ associates to Russia, or had denied legal assistance to, issued injunctions against, or made awards against the Russian authorities in Yukos-related cases, although a strong argument, were not sufficient because the evidence and arguments before those courts could have differed from those before the Court (Khodorkovskiy v. Russia, 2011, § 260; Khodorkovskiy and Lebedev v. Russia, 2013, § 900).

133. The Court was unable to establish the presence of the alleged ulterior purposes and found no breach of Article 18 in conjunction with Article 5 in Khodorkovskiy v. Russia, 2011, and in conjunction with Article 1 of Protocol No. 1 in OAO Neftyanaya Kompaniya Yukos v. Russia, 2011. In Khodorkovskiy and Lebedev v. Russia, 2013, the Court was prepared to accept that there was an ulterior purpose behind the applicants’ criminal prosecution. However, it found no breach of Article 18 as the alleged ulterior purpose was not proven to be predominant.

134. In Khodorkovskiy and Lebedev v. Russia (no. 2), 2020, the applicants raised an issue under Article 18 in conjunction with Article 8 with regard to unavailability of long-term family visits in remand prisons to which they had been transferred, from the correctional facilities where they had been serving their sentences, on account of the novel pending investigation. The impugned restriction lacked any legitimate aim and requisite justification, and constituted a breach of Article 8 taken alone. As it was based on a domestic legislative provision that was applied indiscriminately to all detainees of remand prisons, the Court was unable to find, in the fact of its application in the
present case, evidence of an ulterior motive as alleged by the applicants and found no violation of Article 18 of the Convention (§§ 624-626).
List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk (“*”) in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the ‘Language versions’ tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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