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Guide on Article 18 of the European Convention on Human Rights

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Citation

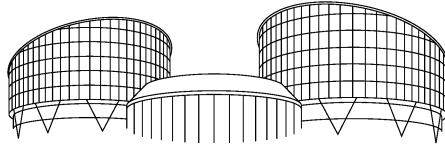
Tan, F. (2018). *Guide on Article 18 of the European Convention on Human Rights*.
Strasbourg. Retrieved from <https://hdl.handle.net/1887/61656>

Version: Not Applicable (or Unknown)

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

Guide on Article 18 of the European Convention on Human Rights

Limitation on use of restrictions
on rights

1st edition – 31 March 2018

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This Guide has been prepared by the Directorate of the Jurisconsult and does not bind the Court. The Jurisconsult is grateful to Floris Tan, LL.M., PhD Candidate, of the Faculty of Law, Leiden University, the Netherlands, for his valuable contribution to the drafting of this Guide.

This Guide was originally drafted in English. The text was finalised on 31 March 2018; it may be subject to editorial revision.

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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 delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 18 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) until 31 March 2018. Readers will find 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 serve not only to decide those cases brought before it 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*, § 154; and, more recently, *Jeronovičs v. Latvia* [GC], § 109).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, 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], § 89, no. 30078/06, 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 Yolları 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 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 and French) of the Court and the European Commission of Human Rights (hereafter “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 were not final when this update was published are marked with an asterisk (*).

I. 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], §§ 303 and 306). 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. 6).
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], §§ 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).
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], § 269):
 - Article 5 § 1 of the Convention: *Winterwerp v. the Netherlands*, § 39; *Guzzardi v. Italy*, § 102; *Ashingdane v. the United Kingdom*, § 44; *Weeks v. the United Kingdom*, § 42; *Kafkaris v. Cyprus* [GC], § 117; *Kucheruk v. Ukraine*, § 177;
 - Article 8 § 2 of the Convention: *De Wilde, Ooms and Versyp v. Belgium*, § 93; *Gillow v. the United Kingdom*, § 54;
 - Article 10 § 2 of the Convention: *Lingens v. Austria*, § 36;
 - Article 11 § 2 of the Convention: *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, § 83;
 - Article 15 of the Convention: *Lawless v. Ireland (no. 3)*, p. 59, § 38;
 - Article 1 of Protocol No. 1: *Beyeler v. Italy* [GC], § 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*, § 898). A comprehensive survey of the Court’s case-law under Article 18 can be found in *Merabishvili v. Georgia* [GC], §§ 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*, § 898).

II. Scope of application

A. The accessory nature of Article 18

6. 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, p. 9; *Gusinskiy v. Russia*, § 73; *Cebotari v. Moldova*, § 49; *Khodorkovskiy v. Russia*, § 254; *OAO Neftyanaya Kompaniya Yukos v. Russia*, § 663; *Lutsenko v. Ukraine*, § 105; *Tymoshenko v. Ukraine*, § 294; *Ilgar Mammadov v. Azerbaijan*, § 137; *Rasul Jafarov v. Azerbaijan*, § 153; *Tchankotadze v. Georgia*, § 113).

7. 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], § 288; see also *Kamma v. the Netherlands*, Commission’s report, p. 9; *Gusinskiy v. Russia*, § 73; *Cebotari v. Moldova*, § 49).

B. Applicability of Article 18

8. 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.), § 4).

9. 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, p. 4; *Oates v. Poland* (dec.); *Gusinskiy v. Russia*, § 73); in other words when it is a qualified right (*Merabishvili v. Georgia* [GC], §§ 265 and 271).

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

11. 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)*, § 261; compare, for example, *Navalnyy and Ofitserov v. Russia*, § 129, where, in the circumstances relevant to that case, the Court rejected as incompatible *ratione materiae* a complaint 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 (see also *Navalnyy v. Russia*, § 88); *Nastase v. Romania* (dec.), §§ 105-109, where it rejected as manifestly ill-founded a complaint under Article 18 read in conjunction with Article 6; *Khodorkovskiy v. Russia (no. 2)* (dec.), § 16, and *Lebedev v. Russia (no. 2)* (dec.), §§ 310-314, where it 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*, §§ 897-909, found no violation of Article 18).

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

12. The Court has examined complaints under Article 18 in conjunction with the provisions listed below:

- Article 5 of the Convention: *Gusinskiy v. Russia*, § 78; *Cebotari v. Moldova*, § 53; *Khodorkovskiy v. Russia*, § 254; *Lutsenko v. Ukraine*, § 110; *Dochnal v. Poland*, § 114;; *Tymoshenko v. Ukraine*, § 301; *Ilgar Mammadov v. Azerbaijan*, § 144; *Rasul Jafarov*

v. Azerbaijan, § 163; *Tchankotadze v. Georgia*, § 110; *Merabishvili v. Georgia* [GC], §§ 318-354; *Ramishvili and Kokhreidze v. Georgia* (dec.);

- Article 6 of the Convention: *Nastase v. Romania* (dec.), §§ 105-109; *Khodorkovskiy v. Russia (no. 2)* (dec.), § 16; *Lebedev v. Russia (no. 2)* (dec.), §§ 310-314;
- Article 8 of the Convention: *Bîrsan v. Romania* (dec.), § 73; *Khodorkovskiy v. Russia (no. 2)* (dec.), § 16; *Lebedev v. Russia (no. 2)* (dec.), §§ 310-314;
- Article 9 of the Convention: *C.R. v. Switzerland* (dec.);
- Article 10 of the Convention: *Şener v. Turkey*, §§ 59-62;
- Article 11 of the Convention: *Navalnyy v. Russia**, §§ 77-79;
- Article 1 of Protocol No. 1: *Isik v. Turkey*, decision Commission; *OAO Neftyanaya Kompaniya Yukos v. Russia*, §§ 663-666; *Bîrsan v. Romania* (dec.), § 73.

13. The Court has thus far found a breach of Article 18 only in conjunction with Article 5 (*Gusinskiy v. Russia*; *Cebotari v. Moldova*; *Lutsenko v. Ukraine*; *Tymoshenko v. Ukraine*; *Ilgar Mammadov v. Azerbaijan*; *Rasul Jafarov v. Azerbaijan*; *Merabishvili v. Georgia* [GC]).

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

14. 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 (*Shimovolov v. Russia*, §§ 52-57; *Hakobyan and Others v. Armenia*, § 123; *Nemtsov v. Russia*, § 103; *Gafgaz Mammadov v. Azerbaijan*, §§ 107-108; *Kasparov v. Russia*, §§ 50-56; *Huseynli and Others v. Azerbaijan*, §§ 146-147; *Ibrahimov and Others v. Azerbaijan*, §§ 126-127; *Navalnyy and Yashin v. Russia*, §§ 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*, §§ 86-88), or in order to proceed with a disguised extradition (*Bozano v. France*, §§ 59-60; *Nowak v. Ukraine*, § 58; *Azimov v. Russia*, §§ 163 and 165; *Eshonkulov v. Russia*, § 65);
 - the applicant was illegally abducted and surrendered to another State (*Iskandarov v. Russia*, §§ 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 (*Čonka v. Belgium*, § 41);
 - citizens of another State were indiscriminately arrested with a view to being deported *en masse* as a measure of reprisal (*Georgia v. Russia (I)* [GC], §§ 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*, § 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*, § 142).

- Article 6: In *Jordan v. the United Kingdom*, 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)*, 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*, 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

15. 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], § 291).

16. The Court has never raised the issue of the application of Article 18 *ex officio*. However, it has examined complaints under Article 18 raised in substance (*Lutsenko v. Ukraine*, § 104).

III. The purpose of restrictions

17. When considering an allegation under Article 18 the Court must 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], § 309).

18. Where the restriction of a Convention right amounts to a continuing situation, the Court will assess what purpose(s) it pursued throughout the whole period of its duration. In particular, it will ascertain whether, at a given moment during the course of the application of the impugned restriction, an ulterior purpose has supplanted the prescribed one or become predominant (*Merabishvili v. Georgia* [GC], §§ 308 and 351).

A. The notion of “ulterior purpose”

19. 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], § 292; *Khodorkovskiy v. Russia*, § 255; *Lutsenko v. Ukraine*, § 106; *Tymoshenko v. Ukraine*, § 294; *Khodorkovskiy and Lebedev v. Russia*, § 899; *Ilgar Mammadov v. Azerbaijan*, § 137; *Rasul Jafarov v. Azerbaijan*, § 153; *Tchankotadze v. Georgia*, § 113).

20. 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], § 283).

21. 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*, § 255; *Lutsenko v. Ukraine*, § 106; *Tymoshenko v. Ukraine*, § 294; *Khodorkovskiy and Lebedev v. Russia*, § 899; *Ilgar Mammadov v. Azerbaijan*, § 137; *Rasul Jafarov v. Azerbaijan*, § 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], §§ 282-283).

22. 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*, § 76; *Cebotari v. Moldova*, § 53; *Merabishvili v. Georgia* [GC], § 353; *Dochnal v. Poland*, § 116);
- punishing and silencing the applicant (*Ramishvili and Kokhreidze v. Georgia* (dec.); *Lutsenko v. Ukraine*, § 109; *Tymoshenko v. Ukraine*, § 299; *Ilgar Mammadov v. Azerbaijan*, § 143; *Rasul Jafarov v. Azerbaijan*, § 162);
- political and/or economic motivation behind criminal prosecution and other relevant proceedings (*Khodorkovskiy v. Russia*, § 254; *OAD Neftyanaya Kompaniya Yukos v. Russia*, § 665; *Khodorkovskiy and Lebedev v. Russia*, § 889; *Nastase v. Romania* (dec.), § 109; *Tchankotadze v. Georgia*, § 114; *Merabishvili v. Georgia* [GC], § 332).

B. Restrictions applied solely for an ulterior purpose

23. Sometimes, a right or freedom is restricted solely for a purpose which is not prescribed by the Convention (*Merabishvili v. Georgia* [GC], § 292).

24. 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*, §§ 63-65 and 67-72; *Tymoshenko v. Ukraine*, §§ 269-271) or the charges against them were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) (*Cebotari v. Moldova*, § 52; *Ilgar Mammadov v. Azerbaijan*, § 100; *Rasul Jafarov v. Azerbaijan*, § 133).

25. The case of *Cebotari v. Moldova* is closely linked to the case of *Oferta Plus S.R.L. v. Moldova*. In *Cebotari v. Moldova*, the applicant, in his capacity as the head of Moldtranselectro, 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 Moldtranselectro 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*, 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*, 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).

26. In *Lutsenko v. Ukraine*, 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).

27. The case of *Tymoshenko v. Ukraine* 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).

28. In *Ilgar Mammadov v. Azerbaijan*, 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 (§§ 142-143).

29. In *Rasul Jafarov v. Azerbaijan*, the applicant, a prominent human rights activist in Azerbaijan, was charged with serious offences “whose core constituent elements could not reasonably be found on the existing facts” (§ 156). He had thus been placed in pre-trial detention in the absence of a “reasonable suspicion”, in violation of Article 5 § 1 (c) taken alone. Against the background of an ongoing campaign to crack down on human rights defenders in Azerbaijan which had intensified at the material time, the Court found a breach of Article 18 as the applicant’s arrest and detention pursued solely the ulterior purpose of silencing and punishing him for his activities in the area of human rights (§§ 159-163).

C. Restrictions pursuing a plurality of purposes

30. It is equally possible that a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes (*Merabishvili v. Georgia* [GC], § 292).

1. General principles

31. Any public policy or individual measure may have a “hidden agenda” (*Khodorkovskiy v. Russia*, § 255; *Lutsenko v. Ukraine*, § 106; *Tymoshenko v. Ukraine*, § 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*, §§ 303-304).

32. 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], § 303).

33. 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], § 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).

34. 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], § 305).

35. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, 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], § 307).

36. 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, and it cannot be excluded that the initial purpose will be supplanted by another as time goes by. The assessment of which purpose was predominant may thus vary over time (*Merabishvili v. Georgia* [GC], §§ 308 and 351).

37. 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], § 319). 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*, § 108; *Tymoshenko v. Ukraine*, § 298; *Ilgar Mammadov v. Azerbaijan*, § 140; *Rasul Jafarov v. Azerbaijan*, § 155).

2. Examples

38. 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.

39. In *Gusinskiy v. Russia* (§§ 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).

40. In *Merabishvili v. Georgia* [GC], 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).

41. 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.

42. In *Merabishvili v. Georgia* [GC], 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).

43. In *Khodorkovskiy and Lebedev v. Russia*, 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

44. 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 *Khodorkovskiy v. Russia*, §§ 255-256 and 260; and *Khodorkovskiy and Lebedev v. Russia*, § 899). Instead, it adheres to its usual approach to proof (*Merabishvili v. Georgia* [GC], § 310).

45. 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], § 311; *Ireland v. the United Kingdom*, §§ 160-161; *Cyprus v. Turkey* [GC], §§ 112-113 and 115; *Georgia v. Russia (I)* [GC], §§ 93 and 95).

46. 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], § 202). Rule 44C § 1 of the *Rules of Court* allows it also to combine such inferences with contextual factors (*Merabishvili v. Georgia* [GC], § 312).

47. 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*, § 66; *Aktaş v. Turkey*, § 272; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], § 152; *Merabishvili v. Georgia* [GC], § 313).

48. 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], § 314).

49. 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], § 147). It is sensitive to any potential evidentiary difficulties encountered by a party (*Merabishvili v. Georgia* [GC], § 315).

50. 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], §§ 282 and 310; contrast *Khodorkovskiy v. Russia*, § 260; *Dochnal v. Poland*, § 116; *Nastase v. Romania* (dec.), § 109; *AO Neftyanaya Kompaniya Yukos v. Russia*, § 603; *Bîrsan v. Romania* (dec.), § 73; *Khodorkovskiy and Lebedev v. Russia*, § 899).

51. 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*, § 142; *Rasul Jafarov v. Azerbaijan*, § 158). 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], § 148; *Merabishvili v. Georgia* [GC], § 317).

52. 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 (*Lutsenko v. Ukraine*, § 108; *Tymoshenko v. Ukraine*, § 298; *Tchankotadze v. Georgia*, § 114). 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], §§ 320 and 325).

B. Allegations of political purposes

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

- the broader political context in which the criminal case was brought against the applicant (*Merabishvili v. Georgia* [GC], § 322; *Khodorkovskiy v. Russia*, § 257; *Khodorkovskiy and Lebedev v. Russia*, § 901; *Nastase v. Romania* (dec.), § 107);
- whether the prosecution and judicial authorities themselves were driven by ulterior motives (*Tchankotadze v. Georgia*, § 114; *Merabishvili v. Georgia* [GC], § 323);
- whether there is evidence that the courts were not sufficiently independent from the executive authorities (*Merabishvili v. Georgia* [GC], § 324);
- the manner in which the criminal proceedings were conducted (*Merabishvili v. Georgia* [GC], § 325);
- 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*, § 258; *Khodorkovskiy and Lebedev v. Russia*, § 908; *Dochnal v. Poland*, § 111; *Merabishvili v. Georgia* [GC], § 318);
- whether the charges against the applicant concerned his/her political activities or common criminal-law offences (*Khodorkovskiy and Lebedev v. Russia*, § 906; *Merabishvili v. Georgia* [GC], § 320);
- whether domestic judicial decisions were well-reasoned and based on the relevant provisions of domestic law (*Nastase v. Romania* (dec.), § 107).

54. 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*, § 258; *Khodorkovskiy and Lebedev v. Russia*, § 903).

55. 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], § 323; *Khodorkovskiy and Lebedev v. Russia*, § 903). The mere fact that a politician is criminally prosecuted, even during an electoral campaign, is not automatically in breach of his or her right to run for office (*Uspaskich v. Lithuania*, §§ 90-100). There is no right as such under the Convention not to be criminally prosecuted (*Merabishvili v. Georgia* [GC], § 320).

56. 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*, § 114; *Merabishvili v. Georgia* [GC], § 324).

57. 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], § 330).

C. Evidence leading to a finding of a breach of Article 18

1. Direct evidence

58. 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.

59. In *Gusinskiy v. Russia*, 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).

60. In *Lutsenko v. Ukraine*, 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).

61. In *Tymoshenko v. Ukraine*, 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

62. In the following cases the Court found a breach of Article 18, basing itself on contextual evidence of ulterior purpose.

63. In *Cebotari v. Moldova*, 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* regarding the breach of the company's right of petition (§§ 137-43);

- 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*, § 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 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*, § 142).

64. In *Ilgar Mammadov v. Azerbaijan* and *Rasul Jafarov v. Azerbaijan*, proof of an ulterior purpose – to silence or punish the applicant in the first case for criticising the authorities and spreading information they were trying to suppress, and the applicant in the second case for his human-rights activities – derived 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. In the first case, these were a close chronological correlation between the applicant's blog entries, the authorities' public statement denouncing them, the charges, and the arrest (*Ilgar Mammadov v. Azerbaijan*, §§ 141-143). In the second case, they were the increasingly harsh regulation of non-governmental organisations 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 (*Rasul Jafarov v. Azerbaijan*, §§ 156-162).

65. In *Merabishvili v. Georgia* [GC], 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.

66. 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.

67. 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], §§ 352-353).

D. Unsubstantiated complaints

68. 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.

69. In *Merabishvili v. Georgia* [GC], 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. The Court 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).

70. In *Kamma v. the Netherlands*, Commission's report, 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. 10-12).

71. In *Ramishvili and Kokhreidze v. Georgia* (dec.), 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 *Gusinskiy v. Russia*, 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.

72. In *Dochnal v. Poland*, 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).

73. In *Nastase v. Romania* (dec.), 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).

74. In *Tchankotadze v. Georgia*, 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).

75. The cases of *OAO Neftyanaya Kompaniya Yukos v. Russia*, *Khodorkovskiy v. Russia* and *Khodorkovskiy and Lebedev v. Russia* 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 disproportionate bailiffs’ fees.

76. 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*, § 910; *OAO Neftyanaya Kompaniya Yukos v. Russia*, §§ 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*, § 260; *OAO Neftyanaya Kompaniya Yukos v. Russia*, § 665; *Khodorkovskiy and Lebedev v. Russia*, § 908).

77. 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*, § 260; *OAO Neftyanaya Kompaniya Yukos v. Russia*, § 663; *Khodorkovskiy and Lebedev v. Russia*, § 902). However, in *Merabishvili v. Georgia* [GC], 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.

78. 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*, §§ 257-58; *Khodorkovskiy and Lebedev v. Russia*, § 903).

79. Second, the charges against the Yukos managers had been genuine and serious, their criminal case had a "healthy core" (*Khodorkovskiy v. Russia*, § 258; *Khodorkovskiy and Lebedev v. Russia*, § 908). The authorities had also legitimately acted to counter tax evasion by Yukos (*OAO Neftyanaya Kompaniya Yukos v. Russia*, § 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).

80. 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*, § 906).

81. Finally, the rulings of courts 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*, § 260; *Khodorkovskiy and Lebedev v. Russia*, § 900).

82. 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*, and in conjunction with Article 1 of Protocol No. 1 in *OAO Neftyanaya Kompaniya Yukos v. Russia*. In *Khodorkovskiy and Lebedev v. Russia*, 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.

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 were not final within the meaning of Article 44 of the Convention when this update was published 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, it is the subsequent Grand Chamber judgment, not the 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.

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