



September 2020

This Factsheet does not bind the Court and is not exhaustive

## Restrictions on the right to liberty and security for reasons other than those prescribed by the European Convention on Human Rights

### **Article 18 (limitation on use of restrictions on rights) of the European Convention on Human Rights ("the Convention"):**

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

### **Article 5 (right to liberty and security) of the Convention:**

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

## Case pending before the Grand Chamber

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### Selahattin Demirtas v. Turkey (no. 2)

20 November 2018 (Chamber judgment) – Case referred to the Grand Chamber in March 2019

This case concerns the arrest and pre-trial detention of the applicant, who at the time of the events was one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. The applicant complains in particular that his initial pre-trial detention and its continuation were arbitrary, and that the duration of his pre-trial detention has been excessive. He also submits that the proceedings before the Constitutional Court did not comply with the Convention requirement of "speediness". He lastly contends that he was detained for expressing critical opinions about the political authorities and argues in that regard that the purpose of his pre-trial detention was to silence him.

In its Chamber [judgment](#) of 20 November 2018, the Court held, unanimously, that there had been no violation of Article 5 § 1 of the Convention, finding that the applicant could be said to have been arrested and detained on "reasonable suspicion" of having committed a criminal offence. However, having regard to the reasons given by the national courts, the Chamber found that the judicial authorities had extended the applicant's detention on grounds that could not be regarded as "sufficient" to justify its duration. It therefore held, unanimously, that there had been a violation of Article 5 § 3. Further, although the period of 13 months and four days before the Constitutional Court could not be described as "speedy" in an ordinary context, in the specific circumstances of the case the Chamber found, unanimously, that there had been no violation of Article 5 § 4. Lastly, the Chamber held, by six votes to one, that there had been a violation of Article 18 of the Convention in conjunction with Article 5 § 3. It found that it had been established beyond reasonable doubt that the extensions of the applicant's detention, especially during two crucial campaigns, namely the referendum and the presidential election, had pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate, which was at the very core of the concept of a democratic society.

On 18 March 2019 the Grand Chamber Panel [accepted](#) the Turkish Government's and the applicant's request that the case be referred to the Grand Chamber.

## Cases in which the Court has found a violation of Article 18 to the Convention in conjunction with Article 5

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### Gusinskiy v. Russia

19 May 2004 (Chamber judgment)

The applicant, the former chairman and majority shareholder of a private media holding company, was arrested and imprisoned in June 2000 on suspicion of having committed fraud in connection with the transfer of a broadcasting licence. He complained that his detention had been unlawful and arbitrary, in particular that there had been no reasonable suspicion that he had committed an offence, and that his detention had not complied with domestic procedure. He also submitted that, by detaining him, the authorities had in fact intended to force him to sell his media business on unfavourable terms and conditions.

The Court held that there had been a **violation of Article 5** of the Convention and a **violation of Article 18 in conjunction with Article 5**. In relation to the applicant's complaint that the true purpose of his detention had been to force him to sell his business on unfavourable terms, it noted in particular that it was not disputed that the applicant had been offered a commercial agreement whilst in prison, in exchange for the termination of the criminal investigation directed against him. In the Court's opinion, however, such public-law matters as criminal proceedings and detention on remand ought not to be used as part of commercial bargaining strategies. The restriction on the

applicant's liberty had therefore been applied not only for the purposes prescribed under the Convention, namely the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence, but also for alien reasons.

### **Cebotari v. Moldova**

13 November 2007 (Chamber judgment)

In 1997 the applicant was the head of Moldtranselectro, a Moldovan State-owned power distribution company. The background to the case was a series of complex contracts concerning importation of electricity from Ukraine to Moldova involving, in particular, Moldtranselectro and a company incorporated in Moldova, Oferta Plus. The applicant, who was declared a suspect in criminal proceedings on charges of large-scale embezzlement of State property, and arrested and remanded in custody in 2006, complained in particular of the unlawfulness of his detention.

The Court held that there had been a **violation of Article 5 § 1** of the Convention. It noted in particular that the accusations against the applicant and the Head of Oferta Plus had been the same, their detention had coincided and the proceedings against them had been dealt with by the same Centre For Fighting Corruption and Economic Crimes investigators and worded in the same way. In this judgment, the Court therefore decided to follow the same reasoning as in its judgment *Oferta Plus S.R.L. v. Moldova* of 19 December 2006 in which it found, in particular, that the accusation against Oferta Plus had appeared to be inconsistent with the findings of the civil courts. Therefore, as found in *Oferta Plus S.R.L.*, the Government had failed to satisfy the Court that there had been a reasonable suspicion that the applicant had committed an offence and there had been no justification for his arrest and detention. Furthermore, the Court could only conclude that the real aim of the criminal proceedings had been to put pressure on the applicant in order to hinder Oferta Plus from pursuing its application before the Court. It therefore held that there had also been a **violation of Article 18 in conjunction with Article 5 § 1**.

### **Lutsenko v. Ukraine**

3 July 2012 (Chamber judgment)

This case concerned the complaint by the applicant, a well-known opposition politician, that his arrest and the decision on his detention had been arbitrary and unlawful, and that he had not been informed about the reasons for his arrest. He also maintained that the proceedings against him and his arrest had been used by the authorities to exclude him from political life and from participation in the upcoming parliamentary elections.

The Court held that there had been several **violations of Article 5** of the Convention, finding in particular that the applicant's arrest had been arbitrary, that no valid reasons had been given for his detention, that he had not been duly informed of the reasons for his detention, and that the lawfulness of his arrest and detention had not been properly reviewed. It also held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that the restriction on the applicant's liberty had been imposed not only for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence, but also for other illegitimate reasons. In this respect, it noted in particular that, being accused of abuse of office, the applicant had the right to reply to such an accusation via the media. The prosecuting authorities had further indicated his communication with the media as one of the grounds for his arrest. They had accused him of distorting public opinion concerning the offences with which he had been charged, of discrediting the prosecuting authorities and of influencing the upcoming trial in order to avoid criminal liability. In the Court's opinion, such reasoning clearly demonstrated the authorities' attempt to punish the applicant for publicly disagreeing with accusations against him and for asserting his innocence.

### Tymoshenko v. Ukraine

30 April 2013 (Chamber judgment)

In April 2011 criminal proceedings were brought against the applicant, who was the leader of one of the leading opposition parties in Ukraine and a former Prime Minister, for alleged excess of authority and abuse of office and in August 2011 the trial court ordered her detention pending trial. She was later convicted of the offences charged and given a prison sentence. The applicant alleged in particular that her detention was arbitrary and that she had had no legal remedy to challenge it or to seek compensation. She also submitted that her detention had been used by the authorities to prevent her from political life and from running as a candidate in the elections of 28 October 2012.

The Court held in particular that there had been a **violation of Article 5 § 1**, a **violation of Article 5 § 4** and a **violation of Article 5 § 5** of the Convention, finding that the applicant's pre-trial detention had been arbitrary, that the lawfulness of her detention had not been properly reviewed, and that she had no possibility to seek compensation for her unlawful deprivation of liberty. The Court further noted that the applicant, who was the former Prime Minister and the leader of one of the strongest opposition party, had been accused of exceeding authority or official powers and had been prosecuted shortly after the change of Government. Recalling that it had already found that the applicant's detention had mainly served to punish her for a lack of respect for the trial court, the Court concluded that the restriction of her liberty had not been applied for the purpose of bringing her before a competent legal authority on reasonable suspicion of having committed an offence, but for other reasons. It considered this a sufficient basis for finding a **violation of Article 18 in conjunction with Article 5**.

### Ilgar Mammadov v. Azerbaijan

22 May 2014 (Chamber judgment)<sup>1</sup>

This case concerned the arrest and pre-trial detention of the applicant, an opposition politician and blogger, following his reporting of street protests in January 2013. The applicant complained in particular that there had been no reasonable suspicion that he had committed a criminal offence, that the courts had failed to provide relevant and sufficient reasons justifying his continued detention, and that there had been no adequate judicial review of his detention. He also submitted that the arrest and the criminal proceedings had been aimed at removing him as a critic of the Government and a potential opponent in the presidential elections.

The Court held in particular that there had been a **violation of Article 5 § 1** of the Convention, finding that the Government had not demonstrated that during the period under consideration the applicant had been deprived of his liberty on a "reasonable suspicion" of having committed a criminal offence. It also held that there had been a **violation of Article 5 § 4**, finding that there had been no genuine review of the lawfulness of the applicant's detention. Lastly, the Court observed that the applicant, who had a history of criticising the Government, had been arrested and detained without any evidence to reasonably suspect him of having committed the offence with which he was charged, namely that of having organised actions leading to public disorder. It found in the present case that the actual purpose of the applicant's detention had been to silence or punish him for criticising the Government and publishing information it was trying to hide. The Court therefore concluded that the restriction of the applicant's liberty had been applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence and that this was a sufficient basis for finding that there had been a **violation of Article 18 in conjunction with Article 5**.

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<sup>1</sup>. See also the Grand Chamber judgment in *Proceedings under Article 46 § 4 of the Convention in the case of Ilgar Mammadov v. Azerbaijan* of 29 May 2019 ([link](#) to press release).

### **Rasul Jafarov v. Azerbaijan**

17 March 2016 (Chamber judgment)

The applicant, a well-known human rights defender, complained in particular that he had been arrested and detained without a reasonable suspicion that he had committed a criminal offence and that the national courts had failed to provide relevant and sufficient reasons justifying his continued detention. He also complained that the national courts had not properly addressed the arguments in favour of his release. Lastly, he complained that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and detention had had the purpose of punishing him as a government critic, silencing him as a human rights defender, discouraging others from such activities, and paralysing civil society in the country.

The Court held in particular that there had been a **violation of Article 5 § 1** of the Convention, in that the charges against the applicant had not been based on a “reasonable suspicion”. It also held that there had been a **violation of Article 5 § 4** on account of the lack of adequate judicial review of the lawfulness of his detention. Lastly, the Court held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that a combination of factors supported the argument that the actual purpose of the measures against the applicant had been to silence and to punish him for his activities as a human rights defender: his arrest and detention in 2014 had occurred in the general context of an increasingly harsh and restrictive legislative regulation of NGO activity; there had been numerous statements by high-ranking officials and articles published in pro-Government media which had accused local NGOs and their leaders, including the applicant, of being traitors and foreign agents; and several other notable human rights activists, who had also cooperated with international organisations protecting human rights, had similarly been arrested and charged.

### **Merabishvili v. Georgia**

28 November 2017 (Grand Chamber judgment)

This case concerned the arrest and pre-trial detention of the applicant, a former Prime Minister of Georgia, and his complaint that these measures had had ulterior purposes. The applicant alleged in particular that the arrest and pre-trial detention had aimed to remove him from the political scene, and that the Chief Public Prosecutor – by having him covertly removed from his cell late at night several months after his arrest to question him – had attempted to use his detention as leverage to pressure him to provide information about the foreign bank accounts of the former President of Georgia Mikheil Saakashvili and about the death in 2005 of the former Prime Minister of Georgia Zurab Zhvania.

The Court held that in particular there had been **no violation of Article 5 § 1** of the Convention with regard to the applicant’s arrest or his pre-trial detention and **no violation of Article 5 § 3** with regard to his initial placement in pre-trial detention. It held however that there had been a **violation of Article 5 § 3** in that, at least from 25 September 2013 onwards, the applicant’s pre-trial detention had ceased to be based on sufficient grounds and that there had been a **violation of Article 18 taken in conjunction with Article 5 § 1**. In this case, the Court came in particular to the conclusion that it had not been established that the applicant’s pre-trial detention had principally been meant to remove him from Georgia’s political scene. However, it found his allegations concerning his covert removal from his prison cell and his late-night questioning during his pre-trial detention sufficiently convincing and therefore proven. In the applicants’ case, the Court considered that the restriction of his right to liberty had amounted to a continuous situation. It came to the conclusion – bearing in mind all the circumstances – that the predominant purpose of that restriction had changed over time. While in the beginning that purpose had been the investigation of offences based on a reasonable suspicion, later on the predominant purpose became to obtain information about Mr Zhvania’s death and Mr Saakashvili’s bank accounts. It was thus chiefly meant for an ulterior purpose not prescribed by the Convention.

### **Mammadli v. Azerbaijan**

19 April 2018 (Chamber judgment)

This case concerned the arrest and detention of a well-known civil society activist and human rights defender, who runs several NGOs involved in election monitoring. He was arrested in December 2013 and held in pre-trial detention until his conviction in May 2014 for a number of offences, including illegal entrepreneurship, tax evasion and abuse of power. The applicant alleged in particular that he had been arrested and detained without any reasonable suspicion that he had committed a criminal offence, that the courts had failed to take into account his arguments in favour of release, and that his arrest and detention had been politically motivated and had been part of a targeted repressive campaign to silence human rights defenders and NGO activists.

The Court held in particular that there had been a **violation of Article 5 § 1** of the Convention because the facts relied on by the prosecuting authorities, namely that the applicant had not complied with legal administrative formalities while carrying out his NGO work, had not been sufficient to suspect him of having committed the offences with which he had been charged. Nor had they provided any other information or evidence which could serve as a basis for the suspicion underpinning his arrest and detention. The Court also held that there had been a **violation of Article 5 § 4** because the courts had not carried out a proper judicial review of the applicant's detention. Lastly, the Court held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that the applicant's arrest and detention had not been to bring him before a competent legal authority on reasonable suspicion of having committed an offence, but had been part of a larger campaign to crack down on human rights defenders in Azerbaijan in 2014.

### **Rashad Hasanov and Others v. Azerbaijan**

7 June 2018 (Chamber judgment)

This case concerned a complaint by the four applicants, all civil society activists, that they had been detained without a reasonable suspicion that they had committed a criminal offence. They also alleged that their arrest and detention were aimed at punishing them for their political and social activism.

The Court held that there had been a **violation of Article 5 § 1** of the Convention, finding that the Government had not demonstrated that the applicants had been deprived of his liberty on a "reasonable suspicion" of having committed a criminal offence. It also held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that the actual purpose of the measures against the applicants had been to silence and to punish them for their active social and political engagement and their activities in the non-governmental organisation NIDA.

### **Aliyev v. Azerbaijan**

20 September 2018 (Chamber judgment)

This case concerned the detention of a lawyer and human rights activist on charges including illegal entrepreneurship, embezzlement and tax evasion. The applicant complained in particular that the authorities had failed to provide reasonable and well-documented evidence that he had committed the crimes in question. He also alleged that his rights had been restricted for purposes other than those prescribed in the Convention.

The Court held in particular that there had been a **violation of Article 5 § 1** of the Convention owing to the lack of a reasonable suspicion that the applicant had committed a criminal offence as grounds for his detention. It also held that there had been a violation of **Article 5 § 4** on account of the lack of a proper judicial review of the lawfulness of his detention. Lastly, the Court held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that the measures taken against the applicant had been aimed at silencing and punishing him for his human rights activities rather than for one of the legitimate purposes under the Convention. The Court noted in particular that this case was part of "a troubling pattern of arbitrary arrest and detention

of critics of the Government, civil society activists and human rights defenders". It called on the Government to take steps to protect such people, ensuring that there were no more retaliatory prosecutions and misuse of the criminal law against them.

See also: [Yunusova and Yunusov v. Azerbaijan \(no. 2\)](#), Chamber judgment of 16 July 2020<sup>2</sup>.

### **Navalnyy v. Russia**

15 November 2018 (Grand Chamber judgment)

This case concerned the complaint of the applicant, a political activist and opposition leader, that his arrest, detention and administrative conviction on seven occasions in 2012 and 2014 had breached his rights and had been politically motivated.

The Grand Chamber held in particular that there had been **violations of** the applicant's rights under **Article 5** of the Convention owing to his seven arrests and two instances of pre-trial detention. It also found a **violation of Article 11** (freedom of assembly and association) of the Convention, holding that two of the applicant's arrests during peaceful gatherings had lacked a legitimate aim while the five others had not been necessary in a democratic society. Lastly, the Grand Chamber held that there had been a **violation of Article 18 in conjunction with Article 5 and 11**. In this respect, it noted in particular that the applicant, who had been arrested seven times over a relatively short period of time, had played a leading role in the first four episodes, but not in the fifth and sixth. Nevertheless, the police had targeted him specifically for arrest in the latter episode. The Grand Chamber further found that there was "converging contextual evidence" that the authorities were becoming increasingly severe towards the applicant and that his allegation of being a particular target appeared coherent in the context of a general move to bring the opposition under control. Therefore the Grand Chamber found it established beyond reasonable doubt that the restrictions on the applicant in the fifth and the sixth episodes had pursued an ulterior purpose, which was to "suppress that political pluralism which forms part of 'effective political democracy' governed by 'the rule of law', both being concepts to which the Preamble to the Convention refers".

### **Navalnyy v. Russia (no. 2)**

9 April 2019 (Chamber judgment)

This case concerned a house-arrest order and the restrictive measures imposed on the applicant, an opposition activist, during a criminal investigation against him. The applicant also complained that the measures against him were politically motivated.

The Court held that there had been a **violation of Article 5** of the Convention, finding that the house-arrest order had not been justified, particularly in view of the fact that there had been no risk of the applicant absconding and trying to avoid the investigation. It also held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the restrictions on him, including tight limits on his communicating, had been out of proportion to the criminal charges he had faced. The Court lastly held that there had been a **violation of Article 18 taken in conjunction with Article 5**, finding that the house-arrest and restrictions on the applicant had been aimed at limiting his public activities.

### **Natig Jafarov v. Azerbaijan**

7 November 2019 (Chamber judgment)

This case concerned the arrest and pre-trial detention of an opposition activist. The applicant submitted in particular that there was no reasonable suspicion that he had committed a criminal offence and that the courts had failed to carry out an effective review of his detention. He also alleged that his arrest and pre-trial detention had in fact been aimed at silencing him and punishing him for his activities in the Republican Alternative Civic Movement (REAL) and its campaign against amendments to the Constitution proposed by a draft Referendum.

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<sup>2</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

The Court held that there had been a **violation of Article 5 § 1** of the Convention, finding that there had been no grounds to bring criminal charges against the applicant and that he had been arrested and placed in pre-trial detention without a reasonable suspicion that he had committed an offence. It also held that there had been a **violation of Article 5 § 4** of the Convention, owing to the lack of an effective review of the lawfulness of the applicant's detention. Lastly, it held that there had been a **violation of Article 18 in conjunction with Article 5**, finding that the totality of the factors in the applicant's case indicated that the ulterior purpose of his arrest and detention had been to punish him for his active political engagement and to prevent him from taking part in the referendum campaign as a member of the opposition. The Court noted in particular that the arrest and detention had not only affected the applicant and other opposition activists and supporters, but also the very essence of democracy as a means of organising society, in which individual freedom could only be limited in the general interest.

### **Kavala v. Turkey**

10 December 2019 (Chamber judgment)

In this case, the applicant, a businessman who has been involved in setting up numerous non-governmental organisations ("NGOs") and civil-society movements which are active in promoting and protecting human rights, argued that his arrest and placement in pre-trial detention had been unjustified. He alleged, inter alia, that there was no evidence grounding a reasonable suspicion that he had committed a criminal offence necessitating his pre-trial detention. He also asserted that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, he submitted that his placement in detention was intended to punish him as a critic of the Government, to reduce him to silence as an NGO activist and human-rights defender, to dissuade others from engaging in such activities and to paralyse civil society in the country.

The Court held that there had been a **violation of Article 5 § 1** of the Convention on account of the lack of reasonable suspicion that the applicant had committed an offence. It also held that there had been a **violation of Article 5 § 4** of the Convention, finding that the proceedings by which the Turkish Constitutional Court had ruled on the lawfulness of his pre-trial detention could not be considered compatible with the "speediness" requirement of that article. Lastly, the Court held that there had been a **violation of Article 18** of the Convention **taken together with Article 5 § 1**, finding that the restriction of the applicant's liberty had been applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence. In particular, the Court considered it to have been established beyond reasonable doubt that the measures complained of in the present case pursued an ulterior purpose, contrary to Article 18 of the Convention, namely that of reducing the applicant to silence. Further, it considered that the contested measures were likely to have a dissuasive effect on the work of human-rights defenders. In consequence, the Court held that Turkey was to take every measure to put an end to the applicant's detention and to secure his immediate release.

### **Ibrahimov and Mammadov v. Azerbaijan**

11 February 2020 (Chamber judgment)

The applicants in this case, both members of a civil society movement, were arrested and prosecuted on drugs charges, which they alleged were false and that the real reason for the authorities' actions was that they had painted political graffiti on the statue of a former president. They alleged in particular that their arrest had not been based on a reasonable suspicion. They also complained that the courts had failed to provide relevant and sufficient reasons to justify their pre-trial detention and that the review of their detention had been ineffective. Lastly, they submitted that their right to liberty had been restricted for purposes other than those set down in the Convention.

The Court held that there had been a **violation of Article 5 § 1** of the Convention for the applicants' arrest without a reasonable suspicion of a criminal offence. It also held



that there had been a **violation of Article 5 § 4** (lawfulness of detention) because the domestic courts had failed to protect the applicants against arbitrary arrest and continued pre-trial detention. Lastly, the Court held that there had been a **violation of Article 18 taken in conjunction with Article 5**, finding that the applicants' liberty had been restricted for purposes other than those set down in the Convention. In this respect, it noted in particular that it was clear from the contextual factors, the failings of the investigation and the timing of the police's actions that the real purpose for the applicants' arrest, detention and prosecution had been their painting the graffiti with political slogans.

### **Khadija Ismayilova v. Azerbaijan (no. 2)**

27 February 2020 (Chamber judgment)

This case concerned the complaint on the applicant, who worked for the Baku bureau of Azadliq Radio, the Azerbaijani service of the US-funded radio station Radio Free Europe/Radio Liberty, as an employee, manager or freelancer, that she had been arrested and detained without a reasonable suspicion of an offence and her allegations that those acts were aimed at punishing her for her work as a journalist who was critical of the Government.

The Court noted in particular that one of the charges against the applicant – that she had incited a former colleague to commit suicide – was based on a false complaint made under coercion and that other charges related to her work at a radio station were not backed up by facts. It found that the material in the case file did not meet the minimum standard for the reasonableness of a suspicion required for arrest and continued detention. The applicant had therefore been deprived of her liberty in **violation of Article 5 § 1** of the Convention. The Court also observed that the domestic courts had failed to verify the existence of a reasonable suspicion underpinning the applicant's arrest and detention, despite her repeated complaints on that issue. It thus held that there had been a **violation of Article 5 § 4** (review of lawfulness of detention) of the Convention. Lastly, the Court held that there had been a **violation of Article 18 taken in conjunction with Article 5**, finding that the authorities' actions against the applicant, a journalist who had published articles critical of members of the Government and their families for alleged corruption and illegal business activities, had been driven by the improper reasons of silencing her and punishing her for her journalistic activity.

## Cases in which the Court found no violation of Article 18 in conjunction with Article 5

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### **Khodorkovskiy v. Russia**

31 May 2011 (Chamber judgment)

This case concerned the arrest and detention for several years of one of the richest people in Russia on charges of economic crimes. The applicant complained in particular that he had been detained unlawfully and for too long and that the charges against him had been politically motivated.

The Court held that there had been a **violation of Article 5 § 1** of the Convention as regards the application's apprehension, finding that it had been unlawful as it had been made with a purpose different from the one expressed. It further held that there had been **no violation of Article 5 § 1** as regards the lawfulness of the applicant's detention pending investigation, a **violation of Article 5 § 3** as regards the length of his continuous detention pending investigation and trial, and four **violations of Article 5 § 4** as regards procedural flaws related to his detention. Lastly, the Court held that there had been **no violation of Article 18** as regards the applicant's claim that his prosecution was politically motivated, as it was persuaded that the charges against him had amounted to a "reasonable suspicion" and hence had been compatible with the Convention. In this respect, the Court observed in particular that while the applicant's case might raise some suspicion as to what the real intent of the Russian authorities

might have been for prosecuting him, claims of political motivation behind prosecution required incontestable proof, which had not been presented. The fact that the applicant's political opponents or business competitors might have benefited from his detention should not have been an obstacle for the authorities to prosecute him if there were serious charges against him. The Court also noted that political status did not guarantee immunity. Otherwise, anyone in the applicant's position would be able to make similar allegations, and in reality it would be impossible to prosecute such people.

See also: [Khodorkovskiy and Lebedev v. Russia](#), Chamber judgment of 25 July 2013.

### **Korban v. Ukraine**

4 July 2019 (Chamber judgment)

This case mainly concerned the arrest of the applicant, a well-known politician, following several sets of criminal proceedings brought against him. The applicant alleged in particular that his arrest on 31 October 2015 and re-arrest on 3 November 2015 had been unlawful and arbitrary. He also complained that his pre-trial detention and house arrest had not been sufficiently justified. He further alleged that the real reasons for his criminal prosecution and deprivation of liberty had been political, in particular because he had become a rival to the ruling party and his new political party had been sharply critical of those in power.

The Court held that there had been a **violation of Article 5 § 1** of the Convention in respect of the applicant's arrest and re-arrest. It also found a **violation of Article 5 § 3** due to the absence of relevant and sufficient reasons for the applicant's deprivation of liberty, and a **violation of Article 5 § 5**, finding that the applicant's effective enjoyment of the right to compensation had not been ensured with a sufficient degree of certainty. The Court held, however, that there had been **no violation of Article 18** of the Convention in the applicant's case, finding that the allegations he had raised had not been sufficiently proven. Even if there might have been some ulterior motives for prosecuting the applicant and depriving him of his liberty, the Court was unable to identify them on the basis of the applicant's submissions, let alone find that those ulterior motives were predominant.

### **Mirgadirov v. Azerbaijan and Turkey**

17 September 2020<sup>3</sup>

This case concerned the arrest on arrival in Baku airport and pre-trial detention of the applicant, an Azerbaijani national, and a well-known journalist who was working as a correspondent for an Azerbaijani newspaper in Turkey, on charges of high treason as he had allegedly spied for Armenia. The applicant submitted in particular that the restrictions imposed on him had been linked to his work as a journalist and political analyst.

The Court held that there had been a **violation**, by Azerbaijan, of **Article 5 § 1** (right to liberty and security) of the Convention, over the absence of a reasonable suspicion of a criminal offence, and over the applicant's detention for 16 hours in the absence of a court order. It also held that there had been a **violation**, by Azerbaijan, of **Article 5 § 4** (judicial review of the lawfulness of detention) of the Convention, on account of the domestic courts' failure to assess the applicant's arguments in favour of his release. The Court held, however, that there had been **no violation**, by Azerbaijan, of **Article 18** of the Convention **in conjunction with Article 5**, finding that, having regard to the applicant's submissions and all the material in its possession, it could not conclude beyond reasonable doubt that his arrest and detention had pursued any ulterior purpose. The Court observed in particular that the applicant had complained briefly and in a general way that the restrictions in question had been applied by the Azerbaijani Government with the intention of isolating him, as a journalist and political analyst, from his professional activity. However, he had failed to specify what in his work could have been behind the restrictions placed on him.

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<sup>3</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

## Cases declared inadmissible under Article 18 in conjunction with Article 5

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### Ramishvili and Kokhreidze v. Georgia

27 June 2007 (Chamber decision on the admissibility)

The applicants, 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. They alleged in particular that their detention had pursued 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.

The Court declared the complaint under Article 18 of the Convention **inadmissible** as being manifestly ill-founded. It noted in particular that, 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. Their channel had also 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.

### Tchankotadze v. Georgia

21 June 2016 (Chamber judgment)

This case concerned the pre-trial detention of the former chairperson of the Civil Aviation Agency and his criminal conviction for abuse of power. The applicant complained in particular that his detention had been unlawful. Moreover, he alleged abusive ulterior motives for the criminal proceedings against him and for his pre-trial detention.

Noting in particular that there had been no judicial decision authorising the applicant's detention for six months, the Court held that there had been a **violation of Article 5 § 1** of the Convention. However, it declared **inadmissible**, as being manifestly ill-founded, the applicant's complaint under **Article 18 in conjunction with Article 5**, noting that it could not be established on the basis of his submissions that there had been improper motives behind his criminal prosecution and detention. 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.

## Texts and documents

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See in particular:

- [Guide on Article 18 of the European Convention on Human Rights – Limitation on use of restrictions on rights](#), prepared by the Directorate of the Jurisconsult of the Court
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