

Article 18

Limitation on use of restrictions on rights



DEPARTMENT FOR
THE EXECUTION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS

DG1

THEMATIC FACTSHEET

October 2024

ARTICLE 18

These summaries are made under the sole responsibility of the Department for the Execution of Judgments of the European Court of Human Rights and in no way bind the Committee of Ministers.

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The human rights protection system established by the European Convention on Human Rights safeguards the rights and freedoms of individuals against the actions of states. Article 18 of the Convention plays a central role in preventing the misuse of power by states, ensuring that restrictions on rights and freedoms are applied only for purposes authorised by the Convention itself. Although Article 18 has no independent existence and can only be applied in conjunction with another Article of the Convention or its Protocols, the European Court of Human Rights has used Article 18 as a tool for interpretation of the restriction clauses contained in other provisions of the Convention or its Protocols. Article 18 is rarely invoked, and whilst violations under this provision are rare (to date, only 27 cases out of more than 26,000 in which the Court has found a violation of the Convention), the Court exercises increased diligence in examining allegations of improper motives.¹

In cases where violations of Article 18 are established, the execution process can be particularly complex. This is confirmed by the fact that the Committee of Ministers has only initiated infringement proceedings under Article 46 § 4 of the Convention twice² in its history, and both instances concerned judgments with violations of Article 18. In accordance with the Committee of Ministers' usual practice, supported by the Court's reasoning in its two Article 46 § 4 judgments, the principle of *restitutio in integrum* requires in such cases that all the negative consequences of the abusive criminal/disciplinary proceedings be erased for the applicant. Other required measures focus on the need to prevent a repetition of the abuse of power, either for the applicant or for others. Where the violation reveals a misuse of the criminal justice system, reforms to reinforce the independence of the judiciary and to shield the judiciary as well as the prosecuting authorities from political influence, in particular from the executive, are necessary.

Even though the majority of Article 18 cases transferred from the Court remain pending full execution before the Committee of Ministers, respondent states have demonstrated their ability to put in place important individual and general measures even in very complex situations. The present factsheet provides examples of measures reported by states in the context of the execution of the European Court's judgments concerning Article 18, where the Committee of Ministers has either considered the measures taken to be sufficient and therefore closed the supervision of the cases or noted positive developments, highlighting the progress made by states in addressing these concerns.

¹ See e.g. *Khodorkovskiy and Lebedev v. Russia*, No. 11082/06 and 13772/05, § 898.

² *Ilgar Mammadov v. Azerbaijan*, No. 15172/13 and *Kavala v. Turkey*, No. 28749/18.

1. Article 18 in conjunction with Article 5 § 1

Quashing of convictions, discontinuation of criminal charges, and restoration of the rights of arrested and detained opposition politicians, civil society activists, and human rights defenders

The cases in this group concern opposition politicians, civil society activists, a journalist and human rights defenders who were arrested and detained between 2013 and 2016. The European Court found a breach of Article 18, taken in conjunction with Article 5 of the Convention, revealing a “troubling pattern of arbitrary arrest and detention of government critics, civil society activists, and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law” (*Aliyev*, § 223). The applicants in this group were the subject of arrest and detention, which the European Court found to constitute a misuse of criminal law, intended to punish and silence them. The Court established that the arrest and detention of each applicant took place in the absence of any reasonable suspicion that he/she had committed an offence (breaches of Article 5 § 1(c)). It also found that the domestic courts had not conducted a genuine review of the lawfulness of the detention (breaches of Article 5 § 4 in *Ilgar Mammadov*, *Rasul Jafarov*, and *Natig Jafarov*). The Court concluded that the actual purpose of the criminal proceedings was to punish the applicants for their activities or prevent their further work and that the restriction of the applicants' rights was applied for purposes other than those prescribed by the Convention (breaches of Article 18 taken in conjunction with Article 5 in *Ilgar Mammadov*, *Rasul Jafarov*, *Rashad Hasanov and Others*, and *Natig Jafarov*).

Following the failure of Azerbaijan to implement the required individual measures in the first case of this group (*Ilgar Mammadov*), the Committee of Ministers initiated, for the first time, infringement proceedings under Article 46 § 4 of the Convention. The Court issued its *Ilgar Mammadov* (Article 46 § 4) judgment in May 2019. In its subsequent decisions, drawing on its own established practice and the Court's reasoning in the *Ilgar Mammadov* (Article 46 § 4) judgment, the Committee repeatedly underlined the requirement for *restitutio in integrum* in each case in this group and stated that this could only be achieved through the quashing of all the applicants' convictions, their erasure from their criminal records and the elimination of all other consequences of the criminal charges brought against them, including by fully restoring their civil and political rights. Between 2020 and 2022, following numerous decisions and interim resolutions by the Committee of Ministers, the Supreme Court of Azerbaijan reopened some of the cases in this group and quashed the convictions of the applicants.

As regards the redress of the individual situations of the applicants, which allowed for the closure of five cases belonging to this group:

Ilgar Mammadov, an opposition politician, was charged with criminal offences and placed in pre-trial detention after commenting on political issues in his personal blog. The Plenum of the Supreme Court quashed his conviction in the light of the findings of the European Court in the Article 46 § 4 judgment. The Plenum awarded Mr Mammadov compensation for non-pecuniary damages in the amount of EUR 127,000, in addition to the EUR 20,000 awarded by the European Court in respect of non-pecuniary damage. The compensation was paid in full. His civil and political rights were fully restored.

AZE / Mammadli group
(47145/14)

Judgment final on 19/07/2018

Status of execution: **pending**

AZE / Ilgar Mammadov
(15172/13)

Judgment final on 13/10/2014

Article 46 § 4 judgment final on 29/05/2019

Final Resolution
CM/ResDH(2020)178

Rasul Jafarov, a well-known civil society activist and human rights defender in Azerbaijan, was arrested in 2014 in connection with criminal proceedings for alleged irregularities in the financial activities of several NGOs. A travel ban was imposed on him, his bank accounts were frozen and he was detained until his conviction and imprisonment in 2015. The Plenum of the Supreme Court quashed his conviction in the light of the findings of the European Court in the Article 46 § 4 judgment. The Plenum awarded Mr Jafarov compensation for non-pecuniary damages in the amount of EUR 31,000, in addition to the EUR 25,000 awarded by the European Court in respect of non-pecuniary damage. His civil and political rights were fully restored.

AZE / Rasul Jafarov
(9981/14)

Judgment final on 04/07/2016

Final Resolution
CM/ResDH(2020)178

Natig Jafarov, is the co-founder and member of the Board of Directors of a political movement called Republican Alternative Civic Movement (REAL), which in 2016 decided to campaign against intended amendments to the Constitution, extending the presidential term to seven years from five and introducing the post of vice-president. In August 2016, the applicant was arrested on the criminal charges of illegal entrepreneurship and aggravated abuse of power. Following the judgment of the European Court, the criminal proceedings against him were terminated, and no negative consequences persist for him on account of the criminal charges brought in the framework of the proceedings examined by the Court. He was awarded EUR 15,000 in respect of non-pecuniary damage, which was paid in full.

AZE / Natig Jafarov
(64581/16)

Judgment final on 07/02/2020

Final Resolution
CM/ResDH(2021)204

The applicants in *Rashad Hasanov and Others* are board members of a non-governmental organisation called NIDA, which wants liberty, justice, truth and change in Azerbaijan and rejects violence and uses only non-violent methods of struggle. The European Court found that the charges brought in 2013 against the applicants were inconsistent and had lacked clarity, with no evidence being presented to back up the investigators and prosecutors' accusations. It ruled that the applicants had been detained without a reasonable suspicion that they had committed an offence. In November 2021, the Plenum of the Supreme Court quashed the applicants' convictions and awarded them compensation for non-pecuniary damage sustained as a result of unlawful arrest and imprisonment, in addition to EUR 20,000 awarded as non-pecuniary damage by the European Court.

AZE / Rashad Hasanov and Others (48653/13)

Judgment final on 07/09/2018

Final Resolution
CM/ResDH(2021)246

In *Azizov and Novruzlu*, the applicants, also members of NIDA, participated in peaceful anti-government demonstrations in 2013 concerning the deaths of soldiers in the army in non-combat situations. They were arrested and remanded in custody on charges of illegal possession of narcotic substances and Molotov cocktails, following searches of their flats and just before another planned demonstration. Their pre-trial detention was extended pursuant to a number of domestic court decisions, and their requests for alternative house arrest were dismissed. Additional criminal charges ensued. In September 2022, the Plenum of the Supreme Court quashed the applicants' criminal convictions and discontinued the criminal charges against them. In addition, they were awarded EUR 20,000 in respect of non-pecuniary damage by the European Court, which was paid in full.

AZE / Azizov and Novruzlu
(65583/13)

Judgment final on 18/05/2021

Final Resolution
CM/ResDH(2022)346

To prevent similar violations, comprehensive domestic structural changes were made to reinforce the role of the judiciary within the Judicial Legal Council (JLC), in particular by ensuring that at least half of its members are judges directly elected or appointed by their peers. In 2023, Parliament adopted amendments to the Law on the JLC with a view to implementing the recommendations of the Group of States against Corruption (GRECO), the Council of Europe's anti-corruption body, on ensuring the independence of judiciary in Azerbaijan and to address the relevant recommendations of the Committee of Ministers. Accordingly, the JLC no longer includes a representative appointed by the President of Azerbaijan. The Minister of Justice and

the Chairman of the Supreme Court are no longer *ex officio* members and the JLC's chairman can only be elected from among its judge members. The number of judges in the JLC has been increased and now nine of the 15 members of the JLC are elected by the Conference of Judges and one member is appointed by the Constitutional Court. The composition now is as follows: three judges from the Supreme Court, three judges from the appeal courts, three judges from the first instance courts, one judge appointed by the Constitutional Court, one member appointed by Parliament, one member appointed by the Ministry of Justice, one member appointed by the Bar Association, one member appointed by the National Academy of Science, and one member to represent the legal community.

The Committee of Ministers continues to supervise the general measures to prevent similar violations in the future necessary for the full implementation of the present group of cases. In particular, the quashing of the convictions of the remaining applicants, who have all been released from detention, in the present group, is required not only to ensure *restitutio in integrum* but also remains a key general measure that would establish a solid and consistent judicial practice against retaliatory and abusive detentions and prosecutions.

Preventing the misuse of criminal proceedings to obstruct an application pending before the European Court

MDA / *Cebotari* (35615/06)
Judgment final on 13/02/2008

Final Resolution
CM/ResDH(2016)147

In the case of *Cebotari v. Moldova*, the European Court found a violation of Article 5 § 1, due to the applicant's arrest and detention without a reasonable suspicion that he had committed an offence. Additionally, it found a violation of Article 18 taken in conjunction with Article 5 § 1, as the real aim of the criminal proceedings and the applicant's arrest and detention was to put pressure on him to hinder a company with separate proceedings pending before the European Court (*Oferta Plus S.R.L. v. Moldova*, 14385/04) from pursuing its application.

The applicant in *Cebotari* was the head of a State-owned power distribution company, upon whose request the Moldovan Ministry of Finance had issued a Treasury bond in favour of *Oferta Plus*, a private company that had paid for electricity, supplied from Ukraine to the applicant's company for consumption by state institutions. *Oferta Plus* brought successful domestic proceedings against the Ministry of Finance for refusing to cash in the bond. Despite bringing enforcement proceedings, the judgment debt was never paid in its entirety and *Oferta Plus* lodged an application with the European Court. Hereafter, the Moldovan Government initiated criminal proceedings against the applicant on charges of large-scale embezzlement of State property, which according to the Court's findings had the real aim of putting pressure on the applicant.

As regards the redress of the applicant's individual situation: In June 2007, even before the Court rendered its judgment, the applicant was acquitted of all charges. The Court awarded the applicant 10,000 euros in respect of non-pecuniary damage, which was paid in full by the authorities.

To prevent violations similar to those found by the Court, the prosecution service underwent a comprehensive reform process aimed at consolidating the independence and efficiency of prosecutors and ensuring the respect of human rights in criminal proceedings. The new Law on the Prosecution Service, adopted in 2016, provides for mechanisms to ensure the independence of prosecutors and their disciplinary responsibility in case of improper performance of their duties. Specifically, the prosecution of a knowingly innocent person is now a crime punishable under Article 306 of the Criminal Code with imprisonment and the

prohibition to maintain certain functions or perform certain activities. Furthermore, the Constitutional Court's decision of 23 September 2013, which prohibited State authorities from interfering in the handling of specific criminal cases, has contributed to the consolidation of the prosecution's independence. The measures taken have thus improved and consolidated the independence of the prosecution from executive and legislative powers (in particular as to the handling of individual cases); put in place measures to exclude political involvement of prosecutors, including the Prosecutor General; and enhanced their criminal and disciplinary accountability.

Preventing the misuse of criminal proceedings to restrict the liberty of opposition politicians

The cases of *Lutsenko and Tymoshenko v. Ukraine* concern violations of Article 18 taken in conjunction with Article 5 of the Convention. The applicants, opposition politicians and former government officials, were subjected to criminal proceedings and detention in 2010 and 2011, respectively. The European Court found that the prosecuting authorities had restricted the applicants' liberty for reasons other than those permissible under the Convention. In the case of *Lutsenko*, the Court noted that the prosecuting authorities had referred to the applicant's communication with the media as a ground for his arrest, accusing him of distorting public opinion and discrediting the prosecuting authorities. The Court found that this reasoning demonstrated an attempt to punish the applicant for publicly disagreeing with the accusations against him and asserting his innocence. In the case of *Tymoshenko*, the Court found that the applicant's detention was formally effected for purposes envisaged by Article 5 § 1(c) of the Convention, but the actual purpose was to punish her for an alleged lack of respect towards the court examining criminal proceedings against her. The Court also found a number of other violations of Article 5 related to the applicants' detention.

In order to remedy the applicant's individual situation, the Court awarded Mr *Lutsenko* 15,000 euros in respect of non-pecuniary damage, which was paid in full. The applicant was pardoned by the President of Ukraine on 7 April 2013 and released on the same day. In March 2014, a domestic court quashed the applicant's convictions, and he was fully rehabilitated. He was later elected as a Member of Parliament and served as the Prosecutor General of Ukraine from 2016 to 2019. Ms *Tymoshenko* did not submit a claim for just satisfaction, but she was released from detention and fully rehabilitated in 2014. She was later elected as a Member of Parliament.

To prevent similar violations, comprehensive domestic structural changes were made to strengthen both the independence of the judiciary and prosecutors against undue external or internal influences. Following the constitutional changes adopted in 2016, the public prosecution service (PPS) now belongs to the judicial branch of power, and its functions are limited to representing state prosecution in court proceedings and ensuring procedural supervision of criminal investigations. Reforms implemented between 2014 and 2019 aimed to strengthen the independence of the PPS and prevent prosecutors from circumventing legislation for undue purposes. Besides constitutional changes, these reforms included the new Law on the Public Prosecution Service, the establishment of prosecutorial self-governance bodies, such as the Qualification and Disciplinary Commission of Prosecutors (QDCP) and the Council of Prosecutors, and a new system of disciplinary proceedings and career management. Further reforms were implemented in 2019, including the reorganisation of prosecutor's offices, vetting proceedings to ensure the integrity and independence of prosecutors, changes to the disciplinary and prosecutorial self-governance bodies, including the dissolution of the QDCP, and increased powers given to the Prosecutor General. Recruitment and career management of prosecutors are now carried out through open competitions, the criteria and procedure of which are defined by the "Relevant Body Conducting Disciplinary Proceedings"

UKR / *Lutsenko* (6492/11)
[Judgment final on 19/11/2012](#)

Status of execution: [pending](#)

UKR / *Tymoshenko*
(49872/11)
[Judgment final on 30/07/2013](#)

[Final Resolution
CM/ResDH\(2023\)41](#)

(the Commission), an independent entity that replaced the QDCP. Disciplinary complaints against prosecutors are now examined by the Commission, which has been fully operational since November 2021.

The Committee of Ministers continues to supervise further general measures necessary for the full implementation of the present case, particularly with regards to strengthening the individual autonomy of prosecutors.

2. Article 18 in conjunction with Article 10

Preventing the misuse of disciplinary proceedings to hinder judges' freedom of expression

The case concerns disciplinary proceedings and sanctions imposed by the Supreme Judicial Council (SJC) against the applicant, a judge who, as the president of the main professional association of judges in Bulgaria, had criticized the SJC and the executive on various topics, including judicial nominations, government policy regarding the independence of the judiciary, and actions related to public concerns about corruption. Initially, the SJC reduced the applicant's salary and later dismissed her from judicial office, citing delays in her handling of cases. However, the Supreme Administrative Court set aside the dismissal and the applicant was ultimately sanctioned with a two-year demotion to a lower-level court. The European Court emphasized the fundamental importance of freedom of expression on matters of public concern, particularly in relation to the functioning of the justice system and the need to protect judicial independence (§ 179). The Court considered the disciplinary proceedings and the severe sanctions imposed on the applicant, which were directly linked to her critical public statements, to be an interference with her right to freedom of expression that was not necessary in a democratic society. The Court found that the disciplinary measures had a chilling effect on the applicant and other judges, violating Article 10 of the Convention. It further held that the main purpose of the disciplinary proceedings and sanctions was to penalise and intimidate the applicant for her criticism of the SJC and the executive, violating Article 18 taken in conjunction with Article 10.

As regards the redress of her individual situation, the applicant returned to her position at the Sofia City Court in February 2017, after the sanction of temporary demotion had expired. She continues to work as a judge and is actively exercising her freedom of expression in public life. The disciplinary penalties imposed on her have been erased *ex lege* due to the passage of time, and she did not seek any other redress.

The Committee of Ministers continues to supervise the general measures to prevent similar violations in the future necessary for the full implementation of the present case, particularly with regard to ensuring reinforced guarantees against undue influence on disciplinary action decided by the SJC.

BGR / *Miroslava Todorova*
(40072/13)

[Judgment final on 19/01/2022](#)

Status of execution: [pending](#)

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