



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

SECOND SECTION

CASE OF MÜYESSER UĞUR v. TÜRKİYE

(Application no. 45738/22)

JUDGMENT

Art 10 • Freedom of expression • Pre-trial detention of an investigative journalist charged with disclosing confidential information relating to the security and political interests of the State in six articles published on a news website • Lack of relevant and sufficient reasons in relation to five of the articles which did not disclose confidential information or State secrets • Sixth article disclosed identity, background and personal characteristics of the commander designated to lead the military operations in Libya • Impugned article contributed to a debate on a matter of public interest • Disclosure of the commander's identity capable of causing "considerable damage" to national security and of affecting his safety • Domestic courts' failure to assess the interference in the light of all the relevant case circumstances • Detention for about five months amounting to an excessive measure liable to produce a significant chilling effect on journalistic activity • Fair balance between the protection of national-security interests and the applicant's right to freedom of expression upset

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 October 2026

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Müyesser Uğur v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Jovan Ilievski,

Oddný Mjöll Arnardóttir,

Gediminas Sagatys,

Juha Lavapuro,

Hugh Mercer, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 45738/22) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Ms Müyesser Uğur (“the applicant”), on 12 September 2022;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the right to freedom of expression and the right to liberty and security, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 1 September 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the pre-trial detention of the applicant, an investigative journalist, who was charged with disclosing confidential information relating to the security and political interests of the State on account of articles published on a news website. The case raises issues under Articles 5 and 10 of the Convention.

THE FACTS

2. The applicant was born in 1963 and lives in Ankara. She was represented by Mr E. Tokatlı, a lawyer practising in Ankara.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S PROFESSIONAL CAREER AND THE ARTICLES LEADING TO HER PRE-TRIAL DETENTION

5. The applicant is a journalist who has written columns in numerous newspapers and websites on various political issues in Türkiye such as military-political relations, domestic politics and national security.

6. At the time of the events giving rise to the present application, the applicant was publishing articles on a news website called *odativ.com* concerning a military cooperation agreement signed between the Turkish Government and the Libyan Government of National Accord, and the subsequent deployment of troops of the Turkish Armed Forces to Libya.¹

7. On 19 December 2019 the applicant published an article entitled “*Libya’ya ne tür ‘asker’ gönderilecek?*” (“What kind of ‘soldiers’ will be sent to Libya?”), the relevant parts of which read as follows:

“... At the beginning of the article, we mentioned that Erdoğan cited the example of a ‘Russian security company’ regarding sending troops to Libya.

[A.T.], a retired major general [who is] Erdoğan’s chief advisor ... stated ... that countries like the United States of America, Russia, and the United Kingdom had had [at various times] private military companies and had used them in places where their armed forces had not been present. He emphasised that Türkiye definitely needed such a company.

Furthermore, [A.T.] argued that it would be better to send troops to Libya through private military companies, saying ‘The Turkish Armed Forces (TSK) exist for the security of our country. If we allocate part of it there, we will be reducing its presence in other areas. If we do it [through private military companies] it won’t be a burden on the TSK. The country [would receive] foreign currency income as though [from] an export product. It [would be] more beneficial to carry out this task through such private companies rather than sending our own TSK there.’

Now let’s ask:

If it happens, what kind of ‘soldiers’ will be sent to Libya...? Do both Erdoğan and Bahçeli understand the same thing by ‘sending soldiers’...? And does Bahçeli also support the idea of ‘military companies’?”

8. On 24 December 2019 the applicant published another article, entitled “*Kim bu Hafter’le görüşen Türk komutanlar*” (“Who are these

¹ In April 2019 a civil war began in Libya between the Libyan National Army led by Khalifa Haftar and the Government of National Accord led by Fayeze al-Sarraj, the latter of which was officially recognised as the Government of Libya by the United Nations. Numerous countries and international organisations, such as the United Nations and the European Union, intervened in various ways in that armed conflict. On 27 November 2019 the Government of Türkiye and the Government of National Accord signed an agreement on security and military cooperation, which was later approved by the Turkish Parliament on 21 December 2019. As a result of that military cooperation agreement, on 2 January 2020 the President of the Republic of Türkiye decided to send troops of the Turkish Armed Forces to Libya. According to the most recent information available to the Court, troops of the Turkish Armed Forces are still deployed in Libya.

Turkish commanders who met with Haftar?"). The relevant parts of that article read as follows:

"... Let's move on to another allegation.

Two days ago, Greek Foreign Minister [N.D.] was in Libya. He met with General Haftar. He said that the agreements made between Türkiye and the Government of National Accord had been contrary to international law.

What we want to draw attention to is a statement in the Greek newspaper *To Vima*, which reported these visits of [N.D.].

The newspaper reported that [N.D.], who stayed in Benghazi for a short time and [also] travelled to Cairo, had said that 'Haftar was very glad that he had met with two Turkish commanders of the Libyan National Army'.

Is this true? If it is true, who are these two 'Turkish commanders'? Are they retired, on active duty or NATO/US-backed 'FETÖ' fugitives?"

9. On 20 January 2020 the applicant published another article, entitled "*Libya'ya hangi komutan gitti?.. Yerine kim geldi?*" ("Which commander went to Libya? Who replaced him?"), the relevant parts of which read as follows:

"After Parliament's resolution (*tezkere*) to send troops to Libya, Erdoğan made the following statements in a television programme of 5 January regarding the mission of Turkish troops and who would be in charge of the operations centre to be established there:

'Our soldiers' duty there is coordination in terms of organising training and education programmes among all our security institutions. They are currently carrying out this coordination. There will be an operations centre there and a lieutenant general of ours will be present in this operations centre. They will manage this process there. The [soldiers] are already gradually [being sent there]. ... Currently, as a combat force, we will have different teams there. They will not be drawn from among our soldiers. These combat forces will work there with different teams. But the coordination will be handled by our senior soldiers ... Including our lieutenant general, and along with our lieutenant general, we will have well-trained teams who [will] make up the chain of command there. We will manage this process with them.'

We talk about Libya every day but, interestingly, no one has wondered, asked or written about who the commander of the Turkish force in Libya is or will be since that [statement by Erdoğan]. [The only follow up has been that] some websites reported that Brigadier General [H.S.], the Commander of the Şırnak Infantry Division, had been appointed to Libya, even though Erdoğan said 'We will have a lieutenant general there'.

CHARACTERISTICS OF THAT COMMANDER

According to the information we have obtained, Lieutenant General [M.G.], the Deputy Chief of the General Staff, has been sent to Libya.

Let us remind you who Lieutenant General [M.G.] is.

During [the] 15 July [coup attempt] he was the commander of the 4th Army Corps and the Ankara Garrison. During the coup attempt he was one of the officers that were taken to Akıncı after being falsely imprisoned [by soldiers participating in the *coup d'état*] at the General Staff Headquarters. Let us summarise the experiences of (M.G.) [after his release: he] went to the Etimesgut Armoured Units School and Army Aviation

Command on the order of [H.A.], the then Chief of the General Staff, and conveyed [H.A.]’s orders ‘There will be no tank movement until further orders, and no aircraft will fly’, according to his own statement ...

...

After 15 July, [M.G.], who was [made] the commander of Combat Service Support Training at the Land Forces Training and Doctrine Command and commander of the Kocaeli Garrison, and then the Chief of Staff of the Land Forces Command, was appointed as the Deputy Chief of the General Staff in 2018, replacing [Ü.D.], who was appointed as the Land Forces Commander.

The remarkable and unique thing about this appointment was that, excluding the one-year period during the 1960 *coup d’état*, this was the first time since 1943 that the position of the Deputy Chief of the General Staff had been filled by an officer with the rank of lieutenant general [rather than by a full general].

In the 2019 [Supreme Military Council], it was expected that [M.G.], who had completed four years as lieutenant general, would be promoted to the rank of full general, but that expectation did not materialise, and his appointment was extended.

Lieutenant General [M.G.], who was born in Mardin, is fluent in Arabic as well as in English.

ACTING DEPUTY CHIEF OF THE GENERAL STAFF

After Lieutenant General [M.G.] was assigned to Libya, Lieutenant General [S.B.] was appointed as acting Deputy Chief of the General Staff.

[S.B.], who had been serving as the Chief of Staff and Garrison Commander of the 3rd Army in Erzincan during the 15 July [coup attempt] and had been appointed Chief of Personnel of the General Staff upon his promotion to lieutenant general in 2016, was expected to be promoted to full general in the 2019 Supreme Military Council, but he had remained as a lieutenant general.

Ten days ago, [S.B.] was appointed as the Deputy Chief of the General Staff and it was learned that he will also continue to serve as the Chief of Personnel.

It should be noted that the dispatch of [M.G.] to Libya and the appointment of [S.B.] as the Deputy Chief of the General Staff already give important clues about the 2020 Supreme Military Council decisions.”

10. On 23 February 2020 the applicant published an article titled “*Suriye Milli Ordusu*” ne zaman, nasıl ve hangi sıfatla Libya’ya gitti” (“When, how and in what capacity did the Syrian National Army go to Libya”). The relevant parts of that article read as follows:

“During his speech at the opening of the Northern Aegean Motorway in Izmir yesterday, Erdoğan said verbatim: ‘We sat down with the legitimate Prime Minister and administration of Libya, and signed the agreements. ... We are there against the illegitimate Haftar, against the mercenary Haftar, with our heroic soldiers and teams from the Syrian National Army ...’

...

Whenever the issue of Libya comes up, Erdoğan has reacted to the Wagner company and Russia as follows: ‘The 5,000 who came from Sudan, the 2,000 who came from Russia under the name Wagner, by what right did they come, what are they doing there?’

Given this situation, how is it that Erdoğan openly declares that the ‘Syrian National Army’ is in Libya?

Now, couldn’t Russia first say ‘in what capacity did the Syrians come, what are they doing there?’

By the way, when and how did the ‘Syrian National Army Troops’ go to Libya?

...

Did [Parliament] know that the ‘Syrian National Army’ would also be sent to Libya when it passed the resolution (*tezkere*)? Let’s look at the resolution passed on 2 January:

...

What does it mention? Only the Turkish Armed Forces ...

...

Let’s immediately recall Erdoğan’s statement on a television programme three days after the resolution was accepted:

‘Our soldiers’ duty there is coordination in terms of organising training and education programmes among all our security institutions. They are currently carrying out this coordination. There will be an operations centre there and a lieutenant general of ours will be present in this operations centre. They will manage this process there. The [soldiers] are already gradually [being sent there]. ... Currently, as a combat force, we will have different teams there. They will not be drawn from among our soldiers. These combat forces will work there with different teams. But the coordination will be handled by our senior soldiers ... Including our lieutenant general, and along with our lieutenant general, we will have well-trained teams who [will] make up the chain of command there. We will manage this process with them.’

It is understood that the said ‘different teams’ that will be ‘a combat force’ are to be drawn from the ‘Syrian National Army’ and they are working under the ‘coordination’ of the Turkish Armed Forces...! What is the legal and political [basis for] this situation?”

11. The applicant published two other articles, entitled “[H.A.] bizim kardeşimizdir” (“[H.A.] is our brother”) and “*Ne yani devletin gazetesi de mi yalan yazdı*” (“So did the State newspaper lie too?”), on the same website on 23 May 2018 and 25 November 2019 respectively. In those articles the applicant addressed issues such as the incriminating statements made by certain defendants regarding the Chief of the General Staff at public hearings held within the scope of criminal proceedings on the attempted *coup d’état* of 15 July 2016, and allegations raised in public by a member of the Turkish Parliament that a religious foundation had begun to take over key positions in two defence industry companies.

II. THE CRIMINAL INVESTIGATION AGAINST THE APPLICANT AND HER PRE-TRIAL DETENTION

A. Inclusion of the applicant in the criminal investigation against E.B. and her arrest

12. On 13 November 2019 the Ankara Chief Public Prosecutor's Office received a tip-off that E.B., a sergeant at the Hadımköy Military Barracks, had been leaking confidential information concerning certain military operations.

13. On 3 December 2019 the Ankara 4th Magistrate's Court ordered the wiretapping of E.B.'s phone communications. Within the scope of that wiretapping measure, phone calls between the applicant and E.B. were intercepted. Those communications mainly concerned the ongoing military operations conducted by the Turkish Armed Forces in Libya and Syria.

14. On 9 January 2020, following the interception of the phone conversations between E.B. and the applicant, the Ankara 7th Magistrate's Court ordered the wiretapping of the applicant's phone communications.

15. According to the wiretapping records, during a phone call on 13 January 2020 the applicant asked E.B. who the high-level commander being sent to Libya to take charge of the operation there would be and E.B. told her that it would be M.G., the then Deputy Chief of the General Staff (*Genelkurmay İkinci Başkanı*).

16. On 15 April 2020 the Ankara 7th Magistrate's Court decided to restrict the suspects' access to the investigation file.

17. On 8 June 2020 both E.B. and the applicant were arrested, and the applicant's home was searched by the police.

B. The questioning of the applicant by the police and the public prosecutor

18. On 11 June 2020, during the questioning of the applicant by the police officers and the public prosecutor, she was asked about the content of her phone communications with E.B. and about her articles, in particular the ones titled "Who are these Turkish commanders who met with Haftar?" and "Which commander went to Libya? Who replaced him?" (see paragraphs 8 and 9 above). The applicant was asked whether she had published those articles in the light of information she had allegedly obtained from E.B. The applicant did not deny her relationship with E.B. but stated that none of her articles had contained State secrets and that she had never obtained or published State secrets. She further stated that E.B. had only been in touch with her by phone and that he had not sent any documents to her although she had asked him to share documents concerning certain points which he had mentioned.

19. On the same date the Ankara Provincial Directorate of Security submitted a report to the public prosecutor. In that report it was stated that in her articles titled “What kind of ‘soldiers’ will be sent to Libya?”, “Who are these Turkish commanders who met with Haftar?”, “Which commander went to Libya? Who replaced him?”, “When, how and in what capacity did the Syrian National Army go to Libya?”, “[H.A.] is our brother” and “So did the State newspaper lie too?” (see paragraphs 7-11 above), the applicant had mentioned confidential information she had obtained from E.B.

20. On the same date the public prosecutor transferred the applicant to the Ankara 3rd Magistrate’s Court and requested that she be placed in pre-trial detention. In his request, the public prosecutor argued, on the basis of the wiretapping records, that the applicant’s articles, such as “Which commander went to Libya? Who replaced him?” and “When, how and in what capacity did the Syrian National Army go to Libya?” (see paragraphs 9 and 10 above), had been written based on secret information leaked by E.B. and that the applicant had also requested numerous documents from E.B. concerning military issues such as an amendment to regulations on martyr ceremonies, the transfer of certain military barracks within the scope of a government project and a report on ill-disciplined acts by certain Turkish soldiers on the Türkiye-Syria border. Then he concluded that the applicant should be placed in pre-trial detention on charges of disclosing information relating to the security and political interests of the State under Article 329 § 1 of the Criminal Code (see paragraph 44 below).

C. The applicant’s questioning at the magistrate’s court and the subsequent decision ordering her initial pre-trial detention

21. At the Ankara 3rd Magistrate’s Court, the applicant repeated her denial of all the accusations, arguing that there was no link between the articles being investigated and her communications with E.B. She further stated that all her articles had been based on publicly available information and that she was a journalist who followed developments within the Turkish military. Her lawyers argued that for her to be convicted of the relevant offence there would have had to have been an imminent and concrete risk to the security and interests of the State, which they denied existed, and submitted that the applicant’s articles had been based on open sources. As for the article entitled “Which commander went to Libya? Who replaced him?” (see paragraph 9 above), they argued, in particular, that the President of the Republic had already declared at the material time that a lieutenant general had been assigned for the military operation in Libya, and that M.G. had been one of only a few lieutenant generals in the Turkish Army at the material time. As for the article titled “Who are these Turkish commanders who met with Haftar?” (see paragraph 8 above), they claimed that it had been stated in the article that certain fugitive Fetullahist ex-military officers had met with

Khalifa Belqasım Haftar, the commander of the Tobruk-based Libyan National Army. They further pointed out that access to the articles in question had not been blocked despite the fact that they had been published several months earlier.

22. On 11 June 2020, following the questioning of the applicant and E.B., the Ankara 3rd Magistrate's Court decided to place them in pre-trial detention on charges of disclosing information relating to the security and political interests of the State. The relevant part of the detention order reads as follows:

“... [A strong suspicion has been] established that suspects E.B. and [the applicant] committed the offence of disclosing confidential information relating to the security and political interests of the state; there is a strong suspicion that the suspects have committed the offence based on the conversations in the wiretapping records ([the accuracy of] which was accepted by the suspects), the content of [the applicant]'s articles, the reports on the seized digital materials and the entirety of the case file; if the suspects are released they could affect the evidence since the investigation is ongoing and the evidence has not been fully collected; if the [criminality of the] suspects' acts is ... established there would be a risk of their absconding given the potential sentence they would be liable to serve; [in the light of the above] judicial control measures alone would not be sufficient, and since it has been concluded that detention is proportionate, it has been decided that the suspects should be placed separately in pre-trial detention in accordance with Articles 100 et seq. of the [Code of Criminal Procedure] ...”

23. On 16 June 2020 the applicant lodged an appeal against the pre-trial detention order. In a decision of 23 June 2020 the Ankara 4th Magistrate's Court dismissed the appeal, on the basis of the case file, holding that the detention decision was in line with domestic law.

24. The magistrates' courts extended the applicant's pre-trial detention on several occasions until the bill of indictment was issued by the public prosecutor. In doing so, they relied in particular on the nature of the offence, the state of the evidence, the fact that the investigation had not yet been concluded, the risk of tampering with evidence, the existence of a strong suspicion that the applicant had committed the offence, the proportionality of the detention measure, and the insufficiency of judicial control.

III. BILL OF INDICTMENT AND THE ENSUING CRIMINAL PROCEEDINGS

25. During the criminal investigation the public prosecutor requested information from the Ministry of National Defence concerning the alleged confidential nature of the information collected by the applicant.

26. In its response, the Ministry of National Defence stated that the information given by E.B. to the applicant, namely that “the Commander of the Libya Task Force was Lieutenant General [M.G.] and he had already gone to Libya” was accurate. It was also noted that the confidentiality levels of the relevant documents containing that information were “Confidential (1), Confidential (2).”

27. On 23 September 2020 the Ankara Chief Public Prosecutor's Office issued a bill of indictment. The public prosecutor argued that most of the information which E.B. had shared with the applicant had been classified as confidential. According to the public prosecutor, the applicant had been constantly in contact with E.B. and had frequently sought classified information from him concerning the military operations in Syria and Libya. He argued that the applicant had written many articles containing information she had obtained from E.B. as a result of those conversations. In the bill of indictment the public prosecutor referred in particular to six articles, entitled "What kind of 'soldiers' will be sent to Libya?", "Who are these Turkish commanders who met with Haftar?", "Which commander went to Libya? Who replaced him?", "When, how and in what capacity did the Syrian national army go to Libya?", "[H.A.] is our brother" and "So did the State newspaper lie too?" (see paragraphs 7-11 above).

28. On 29 September 2020 the Ankara 26th Assize Court accepted the bill of indictment and the criminal proceedings commenced.

29. At the end of a hearing held on 9 November 2020 the applicant was released subject to measures of judicial control.

30. On 11 December 2020 the public prosecutor filed another bill of indictment, charging the applicant with obtaining information on State security under Article 327 § 1 of the Criminal Code (see paragraph 44 below), based on the allegation that she had obtained the above-mentioned confidential information. On 14 December 2020 that bill of indictment was accepted and the two criminal proceedings were joined.

31. On 8 March 2021 the Ankara 26th Assize Court sentenced the applicant to one year and ten days' imprisonment for the offence of obtaining prohibited information under Article 334 § 1 of the Criminal Code, and to two years and six months' imprisonment for the offence of disclosing prohibited information under Article 336 § 1 of the Criminal Code (see paragraph 44 below). It decided to only suspend the sentence handed down to her under Article 334 § 1 of the Criminal Code on the grounds that the sentence handed down in respect of the other offence exceeded the statutory threshold for suspension, namely two years.

32. The trial court ordered the applicant's immediate detention upon conviction.

33. In its reasoning the trial court found that only the article entitled "Which commander went to Libya? Who replaced him?" contained information deemed significant for State interests, whereas the remaining articles did not disclose any information amounting to a criminal offence. It further noted that although the applicant had been charged with obtaining and disclosing information relating to the security and political interests of the State under Articles 327 and 329 of the Criminal Code, the information obtained and disclosed by the applicant was not a State secret, but rather information prohibited from disclosure falling within the scope of

Articles 334 and 336 of the Criminal Code. As a result, the trial court acquitted the applicant of the offences under Articles 327 and 329 of the Criminal Code.

34. The applicant appealed against her conviction.

35. On 3 November 2022 the 4th Chamber of the Ankara Court of Appeals upheld the above-mentioned convictions with final effect. It also upheld the acquittals on the charges brought under Articles 327 and 329 of the Criminal Code, subject to appeal before the Court of Cassation.

36. At the date of the latest information available to the Court (2 April 2024), the criminal proceedings were still pending before the domestic courts, the applicant having lodged an appeal with the Court of Cassation.

IV. THE APPLICANT'S INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT

37. On 3 July 2020, following the decision of the Ankara 4th Magistrate's Court dated 23 June 2020 (see paragraph 23 above), the applicant lodged an individual application with the Constitutional Court.

38. On 7 April 2022 the Constitutional Court, sitting in a plenary formation composed of fifteen judges, held by a majority that the applicant's placement in pre-trial detention had not breached her right to liberty and security under Article 19 of the Constitution or her right to freedom of expression under Article 26 of the Constitution.

39. In examining the applicant's complaints under Article 19 of the Constitution, the Constitutional Court acknowledged that the applicant had been placed in pre-trial detention on the basis of the charge of disclosing confidential information under Article 329 of the Criminal Code and not of obtaining confidential information under Article 327 of the Criminal Code (see paragraph 44 below), but it decided nonetheless to examine the detention order in the light of both offences. It noted in that respect that the applicant had later been charged with both offences (see paragraph 30 above), and that those offences were intertwined, which could in certain cases result in different assessments by the domestic courts as to the classification of similar acts.

40. The Constitutional Court's assessment, in so far as it concerned the existence of a reasonable suspicion in respect of the offence of disclosing confidential information, reads as follows:

"64. In terms of the offence of disclosing confidential information, it was alleged that the applicant compiled confidential information obtained from a certain E.B. and published it on the ODA TV website. It was alleged by the investigating authorities that E.B., as a soldier, conveyed to the applicant confidential information which he had obtained in various ways and which had been of a confidential nature in terms of the security [and] domestic or foreign political interests of the State. It was also alleged that the applicant, as a journalist, disclosed this information to the public under the name of journalistic activity [there]by exceeding the legal limits defined for freedom of the

press. The indictment included six articles of the applicant in this context. However, only two of those articles were associated with the information stated to be confidential.

65. Those two articles are ‘When, how and in what capacity did the Syrian National Army go to Libya?’ (dated 23 February 2020) and ‘Which commander went to Libya? Who replaced him?’ (dated 20 January 2020). In the article dated 23 February 2020, confidential information stating that ‘the Siirt Commando Brigade was preparing for the mission to Libya’ was not included. On the other hand, the article dated 20 January 2020 contains confidential information about the commander to be sent to Libya. Therefore, it is understood that the only evidence to support the allegation that [the applicant] disclosed confidential information is the article dated 20 January 2020.

66. The information disclosed in that article concerns the identity of the commander to be sent to Libya. In the context of the special circumstances of the ... case, it cannot be said that the disclosure of information about the commander to be sent to Libya at a time of live armed conflicts was not capable of causing a potential danger to national security and the right to life of the commander whose name was disclosed. Therefore, it has been concluded that [the magistrate’s court] sufficiently demonstrated that the information in question [could have] cause[d] serious damage and danger to national security or international relations, as stated in the judgment of the Court of Cassation. Therefore, it cannot be said that the assessments made by the investigation authorities and the judicial bodies deciding on the [pre-trial] detention that there [we]re strong indications of a criminal offence in terms of the offence of disclosing information relating to the security and political interests of the State were ill-founded.”

41. In terms of whether there had been a reasonable suspicion as to the offence of obtaining confidential information, the Constitutional Court listed several pieces of information which the applicant had obtained from E.B. Noting that most of that information was sensitive and relevant to the security and interests of the State, the Constitutional Court found that the domestic courts’ assessment as to the existence of a reasonable suspicion that the applicant might have committed the offence under Article 327 of the Criminal Code could not be regarded unreasonable.

42. The Constitutional Court also found that there had been no violation of the applicant’s right to freedom of expression on the grounds that there was no reason for it to depart from its assessment under the right to liberty and security.

43. Four judges disagreed with the majority’s conclusion regarding both of the applicant’s complaints. In their dissenting opinions, written separately by each of them, they opined that the assessment of strong suspicion should have been made only in respect of the offence under Article 329 of the Criminal Code since the applicant had not been detained for the offence under Article 327 of the same code. As regards the existence of a strong suspicion in respect of the article entitled “Which commander went to Libya? Who replaced him?” (see paragraph 9 above), they noted firstly that the rank of the commander assigned to Libya had already been disclosed by the Government and had therefore become public to a certain extent before the publication of the applicant’s article. In their opinion it was not clear that a lawful administrative decision had been made to prohibit the disclosure of relevant

information. They further considered that the investigative authorities had failed to demonstrate how the disclosure in question would harm national security and international affairs. They also noted that in any event the grounds for detention referred to by the magistrate's court had been formulaic and abstract. In their view, the applicant's placement in pre-trial detention had not been necessary or proportionate given that she had been placed in detention five months after the publication of her article and three months after the wiretapping measure had been ordered, and that during her pre-trial detention no fresh evidence had been collected.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

44. The relevant provisions of the Criminal Code, in force at the relevant time, are as follows:

Article 327

"(1) Anyone who procures information that, due to its nature, must remain confidential for reasons relating to the security of the State or its domestic or foreign political interests shall be sentenced to a penalty of imprisonment for a term of three to eight years."

Article 329

"(1) Anyone who discloses information which, due to its nature, must remain confidential for reasons relating to the security of the State or its domestic or foreign political interests shall be sentenced to a penalty of imprisonment for a term of five to ten years."

Article 334

"Anyone who procures information which, due to its nature, must remain confidential and the disclosure of which has been prohibited by competent authorities in accordance with the law and regulatory acts shall be sentenced to a penalty of imprisonment for a term of one to three years."

Article 336

"Anyone who discloses information which, due to its nature, must remain confidential and the disclosure of which has been prohibited by competent authorities in accordance with the law and regulatory acts shall be sentenced to a penalty of imprisonment for a term of three to five years."

II. INTERNATIONAL MATERIALS

45. Recommendation No. R (2000) 7 of the Council of Europe's Committee of Ministers to member States on the rights of journalists not to disclose their sources of information states that the following measures

should not be applied if their purpose was to circumvent the right of journalists not to disclose information identifying a source:

- i.* interception orders or actions concerning communication or correspondence of journalists or their employers,
- ii.* surveillance orders or actions concerning journalists, their contacts or their employers;
- iii.* search or seizure orders or actions concerning the private or business premises, belongings or correspondence of journalists or their employers[,] or personal data related to their professional work.”

46. On 19 April 2007 the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 1551 (2007) on fair trial issues in criminal cases concerning espionage or divulging State secrets. The paragraphs of relevance to the present case read as follows:

“1. The Parliamentary Assembly finds that the State’s legitimate interest in protecting official secrets must not become a pretext to unduly restrict the freedom of expression and of information, international scientific co-operation and the work of lawyers and other defenders of human rights.

2. It recalls the importance of freedom of expression and of information in a democratic society, in which it must be possible to freely expose corruption, human rights violations, environmental destruction and other abuses of authority.

...

5. The Assembly notes that legislation on official secrecy in many Council of Europe member States is rather vague or otherwise overly broad in that it could be construed in such a way as to cover a wide range of legitimate activities of journalists, scientists, lawyers or other human rights defenders.

6. ... For its part, the European Court of Human Rights found ‘disproportionate’ an injunction against the publication in the United Kingdom of newspaper articles reporting on the contents of a book (Spycatcher) that allegedly contained secret information, as the book was readily available abroad.

...

9. It calls on the judicial authorities of all countries concerned and on the European Court of Human Rights to find an appropriate balance between the State interest in preserving official secrecy on the one hand, and freedom of expression and of the free flow of information on scientific matters, and society’s interest in exposing abuses of power on the other hand.

10. The Assembly notes that criminal trials for breaches of State secrecy are particularly sensitive and prone to abuse for political purposes. It therefore considers the following principles as vital for all those concerned in order to ensure fairness in such trials:

10.1. information that is already in the public domain cannot be considered as a State secret, and divulging such information cannot be punished as espionage, even if the person concerned collects, sums up, analyses or comments on such information. The same applies to participation in international scientific co-operation, and to the exposure of corruption, human rights violations, environmental destruction or other abuses of public authority (whistle-blowing);”

47. On 26 September 2007 the Committee of Ministers of the Council of Europe adopted a Declaration on the Protection and Promotion of Investigative Journalism, the relevant parts of which read as follows:

“4. Acknowledging, in this context, the important work of investigative journalists who engage in accurate, in-depth and critical reporting on matters of special public concern, work which often requires long and difficult research, assembling and analysing information, uncovering unknown facts, verifying assumptions and obtaining corroborative evidence;

...

7. Considering that, because of its very nature, investigative journalism is of particular significance in times of crisis, a notion that includes, but is not limited to, wars, terrorist attacks and natural and man-made disasters, when there may be a temptation to limit the free flow of information for security or public safety reasons; ...

II. Calls on member states to protect and promote investigative journalism, having regard to Article 10 of the European Convention on Human Rights, the relevant case law of the European Court of Human Rights and other Council of Europe standards, and in this context:

...

iv. to ensure that deprivation of liberty, disproportionate pecuniary sanctions, prohibition to exercise the journalistic profession, seizure of professional material or search of premises are not misused to intimidate media professionals and, in particular, investigative journalists;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

48. The applicant complained that her pre-trial detention had infringed her right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

49. The Government invited the Court to declare the complaint under Article 10 inadmissible as being incompatible *ratione materiae* with the provisions of the Convention. Relying on Article 17 of the Convention, they argued that the applicant had abused her status as a journalist by disclosing knowingly and willingly confidential military information. In the alternative, the Government invited the Court to declare the complaint inadmissible as being manifestly ill-founded.

50. The applicant contested those arguments.

51. The Court reiterates, firstly, that “the purpose of Article 17 ..., insofar as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; ... therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms ...” (see *Lawless v. Ireland* (no. 3), 1 July 1961, § 7, Series A no. 3). Since the general purpose of Article 17 is, in other words, to prevent individuals or groups with totalitarian aims from exploiting in their own interests the principles enunciated in the Convention, that Article is applicable only on an exceptional basis and in extreme cases, as indeed is illustrated by the Court’s case-law (see *Paksas v. Lithuania* [GC], no. 34932/04, § 87, ECHR 2011 (extracts) and the case-law references therein).

52. In the present case there is no indication that, in obtaining information from her source and publishing her articles, the applicant was essentially seeking to employ Article 10 as a basis under the Convention for a right to engage in activities contrary to the text and spirit of the Convention. Nor did the Government argue that the applicant’s articles contained hate speech or incitement to violence contrary to the fundamental values which the Convention aims to protect.

53. The applicant is therefore not prevented from relying on her right to freedom of expression in this instance. The Government’s objection of incompatibility *ratione materiae* must therefore be dismissed.

54. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

55. The applicant argued that she had been placed in pre-trial detention on account of her articles and her phone conversations with her journalistic

source E.B., which were purely journalistic activities falling within the scope of her right to freedom of expression. That was all the more true because she had subsequently been convicted for disclosing confidential information based only on one of her articles, namely “Which commander went to Libya? Who replaced him?” (see paragraphs 9, 33 and 40 above).

56. The applicant further argued that the domestic courts that had ordered her pre-trial detention had failed to carry out a balancing exercise taking into consideration the journalistic nature of her acts. She contended that, when it comes to the disclosure of State secrets by journalists, the freedom of the press should prevail since the disclosure of certain State secrets could play a significant role in a democratic society.

(b) The Government

57. The Government submitted that the applicant’s pre-trial detention had not constituted an interference within the meaning of Article 10 of the Convention, since the criminal investigation in respect of the applicant had not related to acts falling within the scope of journalism. In that connection, the Government argued that the applicant had been detained pending trial on a reasonable suspicion that she might have committed the relevant offence by constantly seeking confidential information about the army from E.B. and then by publishing it even though, as an experienced journalist working on matters concerning national security and the Turkish military, she had been aware of its sensitive and confidential nature.

58. The Government contended that the applicant’s pre-trial detention had been prescribed by law since it had been ordered in accordance with Articles 100 and 101 of the Code of Criminal Procedure and Article 329 § 1 of the Criminal Code (see paragraph 44 above). It had pursued numerous legitimate aims under Article 10 § 2 of the Convention, namely the protection of national security and the rights of others, as well as the prevention of the disclosure of confidential information. The measure had also been necessary in a democratic society. The domestic courts had examined all the evidence and provided relevant and sufficient reasons for the applicant’s pre-trial detention. A fair balance had been struck between the competing interests. The applicant had obtained the relevant information from E.B. and used it in her six articles. The relevant articles had been published at a time when potential national security risks were greater than in normal times, namely when troops of the Turkish Armed Forces were being transferred to Libya. The offence under Article 329 of the Criminal Code with which the applicant was charged before the magistrate’s court was an abstract endangerment offence, meaning that it penalised conduct considered inherently dangerous even in the absence of actual damage. In that connection, the publication of the applicant’s article titled “Which commander went to Libya? Who replaced him?” (see paragraph 9 above) had posed potential risks to the rights of others, namely the right to life of the commander in question. The applicant

had acted contrary to her duties and responsibilities as a journalist, and being a journalist was not an exemption from criminal liability. As an experienced journalist she should have known that the disclosure and publication of such sensitive and confidential information would constitute an offence. Nor had the article contributed to a public debate or served the right of the public to receive information relating to a public interest. Lastly, the applicant's pre-trial detention had been proportionate since it had lasted for only for five months.

2. *The Court's assessment*

(a) **Whether there was an interference**

59. The Court reiterates that certain circumstances with a chilling effect on freedom of expression will confer on applicants who have yet to be convicted in a final judgment the status of victims of an interference with the freedom in question (see *Dink v. Turkey*, nos. 2668/07 and 4 others, § 105, 14 September 2010; *Altuğ Taner Akçam v. Turkey*, no. 27520/07, §§ 70-75, 25 October 2011; *Nedim Şener v. Turkey*, no. 38270/11, § 94, 8 July 2014; and *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 218, 13 April 2021).

60. In the present case, the Court observes that the applicant was placed in pre-trial detention on charges of disclosing information relating to State security under Article 329 § 1 of the Criminal Code, and was kept in pre-trial detention for approximately five months. Despite the abstract manner in which the Magistrate's Court referred to her articles in the detention order (see paragraph 22 above), the Court observes that the only evidence forming the basis of that decision was the applicant's six articles included in the investigation file at the material time (see paragraph 19 above).

61. The Court therefore considers that the applicant's pre-trial detention on account of her articles amounted to an interference with the exercise of her freedom of expression (see, *mutatis mutandis*, *Sabuncu and Others v. Turkey*, no. 23199/17, § 226, 10 November 2020).

(b) **Whether the interference was justified**

62. In order to be justified, an interference with an applicant's right to freedom of expression must be "prescribed by law", pursue one or more of the legitimate aims mentioned in paragraph 2 of Article 10, and be "necessary in a democratic society" (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 121, 17 May 2016).

(i) *"Prescribed by law"*

63. In the present case, the Court notes that the applicant was placed in pre-trial detention on the basis of the provisions referred to by the Government (see paragraphs 22 and 58 above), a point which was not disputed by the applicant. It therefore concludes that the measure in question

was “prescribed by law” for the purposes of the second paragraph of Article 10.

(ii) “*Legitimate aim*”

64. The Court accepts that the applicant’s pre-trial detention was aimed at protecting “national security” and the rights of others, as well as preventing the disclosure of confidential information (see, *mutatis mutandis*, *Stoll v. Switzerland* [GC], no. 69698/01, §§ 54-62, ECHR 2007-V).

(iii) “*Necessary in a democratic society*”

(α) General principles

65. The fundamental principles concerning the question whether a given interference is “necessary in a democratic society” are well established in the Court’s case-law. They were summarised in *Stoll* (cited above, § 101) and restated in *Bédat v. Switzerland* ([GC], no. 56925/08, § 48, 29 March 2016) as follows:

“(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a ‘restriction’ is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court’s task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was ‘proportionate to the legitimate aim pursued’ and whether the reasons adduced by the national authorities to justify it are ‘relevant and sufficient’ ... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ...”

66. As regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on freedom of expression in two fields, namely political speech and matters of public interest. Accordingly, a high

level of protection of freedom of expression, with the authorities thus having a particularly narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest (see *Bédar*, cited above, § 49).

67. However, all persons, including journalists, who exercise their freedom of expression undertake “duties and responsibilities”. Thus, notwithstanding the vital role played by the press in a democratic society, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that Article 10 affords them protection (*Stoll*, cited above, § 102). That protection is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the tenets of responsible journalism. The concept of responsible journalism, as a professional activity which enjoys the protection of Article 10 of the Convention, is not confined to the contents of information which is collected and/or disseminated by journalistic means. That concept also embraces the lawfulness of the conduct of a journalist, and the fact that a journalist has breached the law is a relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 90, ECHR 2015 and the cases referred to therein; see also *Bédar*, cited above, §§ 49-50).

68. The confidential nature of information relating to the internal organisation and functioning of the armed forces may, in principle, warrant protection on national security grounds (see *Görmüş and Others v. Turkey*, no. 49085/07, § 62, 19 January 2016). Secret information concerning military operations in a conflict zone is *a priori* information that must be protected (see *Gîrleanu v. Romania*, no. 50376/09, § 89, 26 June 2018).

(β) Application of those principles to the present case

69. The Court notes at the outset that the applicant was arrested and placed in pre-trial detention on the suspicion that, in her six articles, she had committed the offence of disclosing confidential information relating to the security of the State, as defined in Article 329 of the Criminal Code (see paragraph 44 above).

70. The Court observes that, as was confirmed during the proceedings before the Assize Court and again in the course of the individual application before the Constitutional Court (see paragraphs 33 and 40 above), although the applicant obtained a significant amount of confidential information from E.B., she disclosed only one classified element, namely the identity of the commander designated to lead the military operations in Libya, in the article entitled “Which commander went to Libya? Who replaced him?” (see paragraph 9 above). The other five articles criticised the President of the Republic, the Chief of the General Staff and the Government’s military operations in Libya, relying on open-source information and public

statements made by high-level politicians and public figures (see paragraphs 7, 8, 10 and 11 above).

71. While the domestic authorities, during the criminal investigation and in the bill of indictment (see paragraph 27 above), argued that the applicant had also obtained a significant amount of confidential information from E.B., it is clear from both the articles themselves and the case file that she did not disclose any such information in the five articles.

72. In the absence of any disclosure of confidential information – let alone State secrets – in those five articles, the Court considers that the magistrates' courts failed to provide relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression in so far as those articles were concerned. In the light of the foregoing, the Court considers that, in so far as it concerned those five articles, the applicant's pre-trial detention cannot be regarded as having been necessary in a democratic society.

73. As regards the sixth article, entitled "Which commander went to Libya? Who replaced him?", the Court observes that the applicant disclosed the name of the commander designated to coordinate the military operation in Libya and his characteristics (his military career, regional origin and language skills – see paragraph 9 above). In this connection, the Government submitted that the disclosure of such confidential information had endangered the security of the operations in that country. They maintained that the applicant's pre-trial detention had therefore been necessary in a democratic society and proportionate to the legitimate aim pursued (see paragraph 58 above).

74. The Court is mindful of the sensitivity of information relating to the organisation of the armed forces and military operations. In comparable cases, in order to determine whether the impugned measure was necessary, the Court has had regard to the following aspects: the interest at stake, the review of the measure by the domestic courts, the conduct of the applicant, and whether the measure imposed was proportionate (see, *Stoll*, cited above, § 112). The Court will apply the same approach to the present case.

– *The interests at stake*

75. In order to determine whether the article in question was of public interest and capable of contributing to a public debate, the Court observes at the outset that the applicant disclosed the name of the commander designated to lead the Turkish operation in Libya, information which had not been officially disclosed by the national authorities at the material time.

76. The Court further notes that, read as a whole, the article went beyond merely revealing the commander's identity. It also contained information concerning his military career, his role during the events of 15 July 2016, his subsequent appointments and promotions within the Turkish Armed Forces, the significance of his appointment as Deputy Chief of the General Staff, his

expected promotion, as well as his regional origin and language skills. Accordingly, the article placed the commander's deployment to Libya in a broader military and institutional context (see paragraph 9 above).

77. Apart from the disclosure of the commander's identity, the information provided by the applicant concerning his background and personal characteristics did not form part of the subject matter of the criminal investigation against her. In the Court's view, that information must be assessed in the light of the article as a whole and the circumstances in which it was published. The article formed part of a series of articles released during a period of heated political debate on the military operation in Libya following the Government's conclusion of a military cooperation agreement (see paragraph 6 above), a matter of both national and international significance. Read in that context, the information concerning the commander's background and career served to place his deployment to Libya in a broader military and institutional framework. The Court therefore considers that the applicant's discussion of those matters may be seen as forming part of a debate on matters of public interest and as contributing to the public debate surrounding the military operation in Libya (see, *mutatis mutandis*, *Stoll*, cited above, § 122; compare *Bédar*, cited above, §§ 65-66).

78. In the Court's opinion, given the limited number of people holding the rank of lieutenant general (see paragraph 21 above), once the background and personal characteristics of the commander had been disclosed, well-informed readers could have guessed the identity of the person appointed to lead the military operations in Syria. In this sense, the background and personal characteristics of the commander were inextricably linked to his name and disclosing the former without mentioning the latter could have appeared somehow artificial. In this regard, the Court reiterates that Article 10 of the Convention leaves it to journalists to decide what details ought to be published in order to ensure an article's credibility (see *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, § 86, 11 May 2021).

79. In the light of the foregoing, the Court considers that the article contributed to a debate on a matter of public interest.

80. The Court nevertheless accepts that the disclosure of the commander's identity, notwithstanding its connection with the information discussed above, was capable of affecting interests relating to national security and to the safety of the individual concerned. It must therefore examine whether, in the particular circumstances of the case, that disclosure was capable of causing "considerable damage" to national security or, as held by the Constitutional Court, to impair the rights of the commander concerned (see paragraph 40 above; see also *Hadjianastassiou v. Greece*, 16 December 1992, § 45 *in fine*, Series A no. 252, and *Pasko v. Russia*, no. 69519/01, § 86, 22 October 2009, for cases concerning military interests and national security in the strict sense; see also, *mutatis mutandis*, *Stoll*, cited above, § 130).

81. The Court attaches weight to the Government's argument that the article was published at a time when potential risks to national security were heightened, as troops of the Turkish Armed Forces were being deployed to Libya (see paragraph 58 above). It reiterates in this connection that the disclosure of confidential information concerning military operations in a conflict zone may be capable of causing considerable damage to the interests of the State (see the case-law cited in paragraph 68 above). Given that the publication occurred at a particularly sensitive stage of the deployment of troops, the interests relied upon by the Government cannot be dismissed. In this respect, the Court shares the Constitutional Court's view that the disclosure of the identity of the commander designated to be deployed to Libya, at a time when armed hostilities were ongoing, could not be regarded as devoid of potential implications for national security and for the safety of the individual concerned (see paragraph 40 above).

82. In view of the foregoing, the Court accepts that, given the sensitive stage at which the publication occurred, the disclosure of the identity of the commander designated to coordinate the operation was liable to cause considerable damage to the interests relied upon by the Government.

– *The review of the measure by the domestic courts*

83. As far as the review of the measure against the applicant by the domestic courts is concerned, the Court reiterates that it is not for it to take the place of the States Parties to the Convention in defining their national interests, a sphere which traditionally forms part of the inner core of State sovereignty. However, considerations concerning the fairness of proceedings may need to be taken into account in examining a case of interference with the exercise of Article 10 rights (see *Stoll*, cited above, § 137, and *Gîrleanu*, cited above, § 94).

84. The Court has already found that the article contributed to a debate on a matter of public interest (see paragraph 79 above). It has also accepted that the disclosure of the identity of the commander designated to coordinate the military operation in Libya engaged interests relating to national security and to the safety of the individual concerned (see paragraphs 81 and 82 above). The Court is prepared to accept that the protection of information relating to the organisation of an ongoing military operation may justify certain restrictions on freedom of expression. However, the protection of such interests cannot be ensured at any cost. The task of imparting information and exercising public scrutiny entrusted to the media extends also to the activities of the armed forces. Accordingly, for the Government's arguments to justify the interference complained of, the alleged risks must be established in a concrete and effective manner and be shown to correspond to one of the legitimate aims set out in Article 10 § 2 of the Convention (see, *mutatis mutandis*, *Görmüş and Others*, cited above, § 62).

85. Turning to the circumstances of the present case, the Court observes that the domestic courts, when ordering and extending the applicant's pre-trial detention, essentially confined themselves to stating that the information published by the applicant was classified as secret and that there was a strong suspicion that she had committed the offence of disclosing confidential information relating to State security within the meaning of Article 329 of the Criminal Code. They did not attempt to assess the significance of the information disclosed, the contribution made by the article to a debate on a matter of public interest, or the extent to which the disclosure was capable of causing damage to national security or to the safety of the commander concerned. Nor did they seek to balance those interests against the applicant's right to impart information and the public's right to receive it.

86. Furthermore, the national authorities failed to address the applicant's argument that, prior to the publication of her article, the military rank of the commander concerned had already been disclosed by senior government officials and that, at the material time, only a very limited number of individuals held that rank (see the dissenting opinions of the minority judges of the Constitutional Court, summarised in paragraph 43 above, as well as the applicant's submissions before the domestic authorities summarised in paragraph 21 above, which have not been disputed by the Government on this point). In the Court's view, the domestic authorities did not examine whether, in those circumstances, the interest in protecting the commander's identity had already been substantially diminished or whether the potential harm which the impugned restriction sought to prevent had, at least in part, already materialised.

87. The Court acknowledges that it may be difficult for the domestic authorities to conduct a comprehensive assessment of all the aspects of a criminal offence at the early stages of a criminal investigation. However, in the present case, in the context of its examination of the individual application the Constitutional Court had the opportunity to undertake a thorough assessment and to determine whether a fair balance had been struck between the competing interests at stake. Although the Constitutional Court referred to the potential security risks posed by the applicant's article in view of the active military operations at the material time (see paragraph 40 above), it essentially transposed to its examination of the applicant's freedom-of-expression complaint the conclusions it had previously reached concerning the lawfulness of her detention. Similarly to the other domestic courts (see paragraph 85 above), the Constitutional Court did not undertake a separate assessment of whether a fair balance had been struck between the interests relating to national security and the safety of the commander concerned and the applicant's right to impart information and the public's right to receive information on matters of public interest (see paragraph 42 above).

– *The conduct of the applicant*

88. The Court firstly reiterates its case-law concerning responsible journalism and the role of journalists in a democratic society as public watchdogs (see, for example, *Bédat*, cited above, § 50, and *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II; see also the case-law quoted in paragraph 67 above).

89. As regards the manner in which the applicant obtained the information in question, the Court notes at the outset that the applicant was not a member of the armed forces, on whom specific “duties” and “responsibilities” are incumbent (see, *mutatis mutandis*, *Gîrleanu v. Romania*, no. 50376/09, § 90, 26 June 2018).

90. The Court notes that the applicant was a journalist specialising in international affairs. In the context of her professional activities, she could reasonably be expected to actively seek information on matters of public interest with a view to informing the public and contributing to debate on issues of public concern. It appears from the material before the Court that E.B., a member of the armed forces, was one of her journalistic sources. Through that source, the applicant obtained various pieces of information, including the identity of the commander designated to lead the military operations in Libya. That being said, there is no indication in the case file that the applicant obtained the information in question by unlawful means. Nor did she resort to tricks, threats or other means to pressurise E.B. into disclosing confidential information (see, *mutatis mutandis*, *Dammann v. Switzerland*, no. 77551/01, § 55, 25 April 2006).

91. Nevertheless, the fact that the applicant did not obtain the information by unlawful means is not in itself decisive for the assessment of whether she complied with the duties and responsibilities inherent in the exercise of journalistic freedom.

92. The Court accepts that, given her experience as a journalist specialising in international affairs, the applicant could reasonably have been expected to appreciate the sensitive nature of the information she was disclosing and to foresee the potential consequences of its publication. However, the Court has already found that the article contributed to a debate on a matter of public interest (see paragraph 79 above). Moreover, read as a whole, it does not suggest that the applicant’s intention was anything other than to inform the public on matters connected with a debate on issues of general interest, as opposed to pursuing any ulterior purpose, such as harming the interests of the State or acting in bad faith (compare *Stoll*, cited above, § 151).

93. Even assuming that the applicant’s decision to disclose the commander’s identity may be regarded as raising issues concerning the duties and responsibilities inherent in the exercise of journalistic freedom, the Court considers that particular weight must be attached to the nature and severity of the measure imposed on her.

– *Whether the measure in question was proportionate*

94. The Court notes that even where serious charges have been brought, pre-trial detention should only be used as an exceptional measure of last resort when all other measures have proved incapable of fully guaranteeing the proper conduct of proceedings. Should this not be the case, the national courts' interpretation cannot be regarded as acceptable (see *Şahin Alpay v. Turkey*, no. 16538/17, § 181, 20 March 2018).

95. The pre-trial detention of anyone expressing critical views produces a range of adverse effects, both for the detainees themselves and for society as a whole, since the imposition of a measure entailing deprivation of liberty, as in the present case, will inevitably have a chilling effect on freedom of expression by intimidating civil society and silencing dissenting voices (see *Şahin Alpay*, cited above, § 182).

96. In the present case, the applicant's pre-trial detention lasted for approximately five months. The Court has found above that when ordering her pre-trial detention, the domestic authorities failed to balance the interest in maintaining the confidentiality of the information against the applicant's right to conduct journalistic investigations and the public's right to be informed (paragraphs 72 and 84-87 above). It further notes that the severity of the measure and its chilling effect on the freedom of expression of the applicant and of other journalists do not appear to have been taken into account by the domestic courts. The Court considers that the impugned measure was excessive in the circumstances of the present case, thereby upsetting the fair balance which should have been maintained between the measure in question and the legitimate aim pursued by the national authorities (see paragraph 64 above).

(iv) *Conclusion*

97. The Court accepts that, although the impugned article, read as a whole, contributed to a debate on a matter of public interest, the disclosure of the commander's identity was capable of causing "considerable damage" to national security and of affecting the safety of the individual concerned. Nevertheless, the domestic authorities failed to assess the interference complained of in the light of all the relevant circumstances of the case. In particular, they did not adequately examine the contribution made by the article to a debate on a matter of public interest or properly assess the risks allegedly arising from the disclosure of the commander's identity. More importantly, the Court attaches particular weight to the nature and severity of the measure imposed on the applicant. Her detention for almost five months constituted a particularly serious interference with the exercise of freedom of expression and was liable to produce a significant chilling effect on journalistic activity. In these circumstances, the Court considers that the fair

balance between the protection of national-security interests and the applicant's right to freedom of expression was upset.

98. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

99. The applicant complained under Article 5 of the Convention that there had been no evidence capable of justifying a reasonable suspicion that she had committed a criminal offence necessitating her pre-trial detention. She also complained that no relevant and sufficient grounds had been given for the decision ordering her detention.

100. The Government contested those allegations.

101. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible. It further observes that the applicant's detention stemmed directly from the exercise of her right to freedom of expression. In these circumstances, and having regard to its finding of a violation of Article 10 of the Convention (see paragraph 98 above), the Court considers that it has already addressed the main legal issue raised in the application. It therefore finds that there is no need to examine the merits of the applicant's complaint under Article 5 of the Convention (see *Tsaava and Others v. Georgia* [GC], nos. 13186/20 and 4 others, §§ 225-229, 11 December 2025; see also, *mutatis mutandis*, *Demirel and Others v. Turkey*, no. 75512/01, § 27, 24 July 2007; *Demirel and Ateş v. Turkey* (no. 3), no. 11976/03, § 38, 9 December 2008; and *Ürper and Others v. Turkey*, nos. 14526/07 and 8 others, § 49, 20 October 2009).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

103. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage and costs and expenses. She also claimed EUR 100,000 in respect of non-pecuniary damage.

104. The Government contested the applicant's claims.

105. The Court considers that the applicant has not shown the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects the claim under this head. However, it awards the

applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

106. The applicant's claim of EUR 25,000 mentioned in paragraph 103 above also covered costs and expenses incurred before the domestic authorities. However, she failed to submit any documentation in that connection.

107. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court also points out that under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents, failing which the Chamber may reject the claim in whole or in part (see *Mirgadirov v. Azerbaijan and Turkey*, no. 62775/14, § 163, 17 September 2020). In the present case, the applicant failed to produce any documentary evidence in support of her claim for costs and expenses. Therefore, the Court dismisses it.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;
3. *Holds*, unanimously, that there is no need to examine the merits of the complaint under Article 5 of the Convention;
4. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

MÜYESSER UĞUR v. TÜRKİYE JUDGMENT

Done in English, and notified in writing on 6 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Yüksel is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE YÜKSEL

I respectfully disagree with the finding under Article 41 concerning just satisfaction, since I am of the opinion that the main legal issue in the present case stems from the domestic courts' failure to conduct an adequate balancing exercise. Consequently, I consider that the finding of a violation constitutes in itself just satisfaction for any non-pecuniary damage claimed.