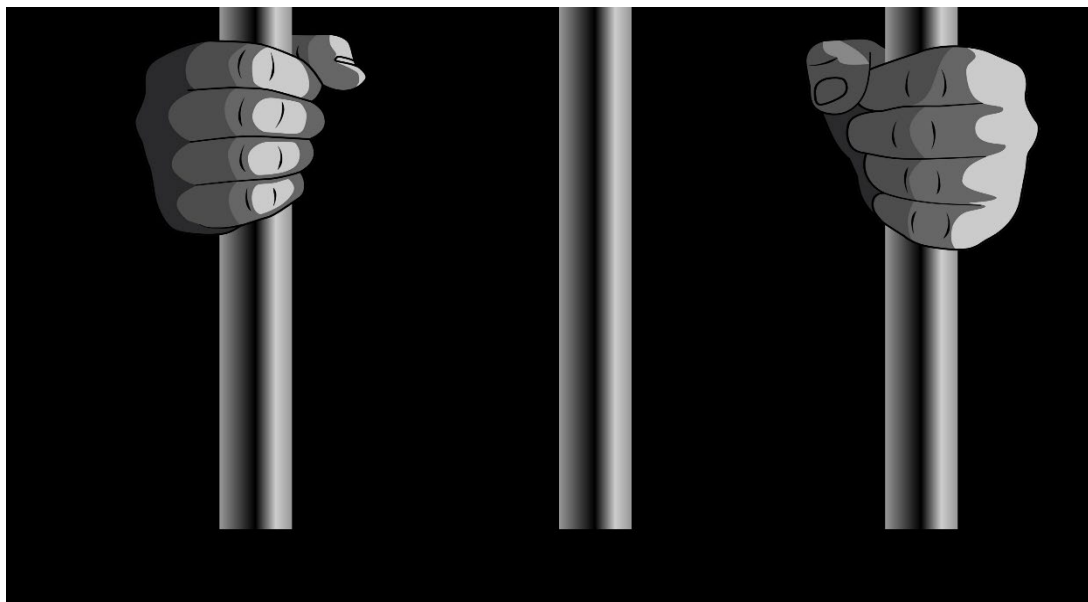


Thematic factsheet ¹

Updated : July 2024

CUSTODY, DETENTION AND IMPRISONMENT OF JOURNALISTS



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INTRODUCTION

The detention and imprisonment of journalists pose significant challenges to media freedom and human rights. As enshrined in Article 5 of the European Convention on Human Rights, the right to liberty and security places a positive obligation on states to prevent arbitrary or unjustified deprivations of liberty.

Article 5 establishes the right to liberty and security. It not only requires states to refrain from infringing these rights but also compels them to take effective protective measures. The principles of the rule of law, legal certainty, proportionality, and protection against arbitrariness guide the interpretation of Article 5. Domestic laws must clearly define conditions for deprivation of liberty, ensuring that they meet the standard of “lawfulness” set by the Convention.

Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial. Principles related to the protection of journalists under Article 6 include:

- Fairness Principle:

The key principle governing Article 6 is fairness. Courts must ensure fair proceedings in criminal cases, including those involving journalists.

- Public Judgment and Exclusion:

Judgments should be pronounced publicly, but the press and public may be excluded from parts of the trial in specific circumstances:

To protect morals, public order, or national security.

When the interests of juveniles or the private life of parties require it.

In special circumstances where publicity would prejudice justice.

- Coercive Measures and Journalists' Protection:

Any coercive measures against journalists must be prescribed by law, transparent, and subject to effective procedural safeguards.

Member states have positive obligations under Article 10 to protect journalists and prevent impunity. These obligations imply that states must take effective measures to safeguard journalists' safety and ensure they can carry out their work without fear of reprisal.

Violations of these articles can occur when journalists are unlawfully detained, denied a fair trial, or face restrictions that impede their freedom of expression. Upholding these rights is crucial for a functioning democracy and the protection of journalists' safety and independence.

In assessing interferences with a right protected under the Convention, the Court carries out a three-fold test, by which it determines whether the interference:

⇒ is “prescribed by law”, i.e. sufficiently accessible, clear, unambiguous and precise to enable individuals to regulate their conduct;

⇒ “pursues one or more of the legitimate aims” set out in the provision, and

⇒ is “necessary in a democratic society” in order to achieve the legitimate aims.

In addition, the Court evaluates other relevant ECHR articles in comparison, to be able to strike a fair balance between other affected human rights and freedom of expression.

¹ This document presents a non-exhaustive selection of relevant provisions of the European Convention on Human Rights, related case-law of the European Court of Human Rights (source: [HUDOC](#) database), and other relevant Council of Europe instruments. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to impair relevant provisions of the Convention and applicable instruments. It is not a legal assessment of Platform alerts and should not be treated or used as such.

STANDARDS OF THE COUNCIL OF EUROPE

Recommendation [CM/Rec\(2016\)4 \(coe.int\)](#) of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (13 April 2016):

- 11. In all cases of deprivation of liberty of journalists or other media actors by the police or other law-enforcement officials, adequate procedural guarantees must be adhered to, in order to prevent unlawful detention or ill-treatment. Such procedural guarantees must include: the right to inform, or to have informed, a third party of their choice of their deprivation of liberty, their location and any transfers; the right of access to a lawyer; the right of access to a medical doctor; and the right to challenge the lawfulness of the detention before a court of law. Persons arrested or detained in relation to the commission of an offence must be brought promptly before a judge, and they have the right to a trial within a reasonable time or to be released pending trial, in accordance with Article 5 of the Convention (right to liberty and security).
- 17. Female journalists and other female media actors face specific gender-related dangers in the course of their work, such as threats, (sexual) aggression and violence, in targeted ways, in the context of mob-related sexual violence or sexual abuse while in detention. These dangers are often compounded by various factors, such as under-reporting, under-documentation, lack of access to justice, social barriers and constraints concerning gender-based violence, including stigmatisation, lack of recognition of the seriousness of the problem and discriminatory attitudes by extremist sections of society. A systematic, gender-sensitive approach is required to prevent and combat these specific dangers, as well as to counter the underlying societal customs, practices, gender stereotypes, prejudices and discrimination on which they feed. Primary responsibility for developing such strategies lies with State authorities, but media, civil society and corporate organisations also have important roles to play: a gender-specific perspective should be a central feature of all measures and programmes dealing with the protection of journalists and other media actors and the fight against impunity.
- 25. The State has an obligation to guarantee the substantive liberty of everyone within its jurisdiction and to that end must ensure that journalists and other media actors are not subjected to arbitrary arrest, unlawful detention or enforced disappearance.

CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

Director of media organisation detained for suspected involvement in targeted campaign against members of an opposing religious group, which included broadcasting of unsubstantiated allegations of terrorism

[Karaca v. Türkiye](#), application No. [25285/15](#), judgment 20 September 2023

The case concerns the applicant's arrest and detention pending trial for having broadcast a television series on one of the Samanyolu media group's channels, owned by the Gülenists, with the aim of defaming, by presenting them as terrorists, the members of another Islamist group, known as Tahşiyeciler ("the Annotators"), whose views are purported to be generally opposed to those of the Gülenists.

The European Court of Human Rights held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant, as the owner of the website, had removed the forbidden material and was still not able to have his website unblocked. The Court held that there had been no legal basis for the blocking order, in that the legislation on which the order was based did not permit the authorities to block access to an entire Internet site. In so far as the blocking measure was imposed by a national court, it did not matter

that it was implemented by a public authority rather than the telecoms regulator. Blocking access to a website's IP address has the practical effect of extending the scope of the blocking order far beyond the illegal content which had originally been targeted. The Court found that there was no legal basis for blocking access to the applicant's entire website when it contained one page of extremist material. The Court also considered that the finding of unlawfulness applied *a fortiori* to the continued blocking of the website after the prohibited material had been removed. The Court explained that the procedural requirement of Article 10 is ancillary to the wider purpose of ensuring respect for the substantive right to freedom of expression, as well as the right to an effective remedy afforded a procedural safeguard.

Detention of a journalist following publications allegedly supporting the use of violence and terror for political ends

[Şık v. Turkey \(no. 2\)](#), application No. [36493/17](#), judgment 19 April 2021

The case concerned the initial and continued pre-trial detention of the journalist Ahmet Şık, who was suspected of disseminating propaganda in favour of organisations considered to be terrorist organisations or of assisting them through articles and interviews published in the Turkish daily newspaper Cumhuriyet and social media posts, all of which criticised government policy.

The European Court of Human Rights held unanimously, that there had been a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights; by a majority, that there had been a violation of Article 10 (freedom of expression) and unanimously, that there had been no violation of Article 5 § 4 (right to speedy review of the lawfulness of detention).

The Court held that Mr Şık could not be reasonably suspected, at the time of his placement in detention, of having committed the offences of disseminating propaganda in favour of terrorist organisations or assisting those organisations. Accordingly, although imposed under judicial supervision, the orders for Mr Şık's initial and continued detention had been based on mere suspicion.

In particular, the Court considered that the written material for which Mr Şık had been accused and placed in detention came within the scope of public debate on facts and events that were already known, that it amounted to the exercise of Convention freedoms, and that it did not support or advocate the use of violence in the political sphere or indicate any wish on the applicant's part to contribute to the illegal objectives of terrorist organisations, namely to use violence and terror for political ends.

The Court further found that the interference with Mr Şık's rights and freedoms, viewed in the light of the right to freedom of expression, had not been prescribed by law.

Detention of a singer and columnist

[Atilla Taş v. Turkey](#), application No. [72/17](#), judgment 19 April 2021

The case concerned the pre-trial detention of the singer and columnist Atilla Taş because of tweets he posted on his Twitter account and articles and columns he wrote in the daily newspaper Meydan, between 2011 and 2016, criticising government policies. Mr Taş was prosecuted for terrorism related offences.

The European Court of Human Rights held unanimously, that there had been a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and a violation of Article 10 (freedom of expression) and by a majority (four votes to three), that there had been no violation of Article 5 § 4 (inability to consult the investigation file).

The Court found in particular that at the time of Mr Taş's placement in pre-trial detention there had been no facts or information that would satisfy an objective observer that he had committed the offences in question. Although it could be regarded as sharply critical of the policies of the government and the President of the Republic, the content of the applicant's articles and tweets was not capable of satisfying an objective observer of the plausibility of the accusations on which the order for his pre-trial detention had been based. Furthermore, through his articles and tweets Mr Taş had expressed his disagreement with the functioning of the political system in Turkey, at times in satirical fashion, and had mainly expressed views on matters of general interest.

Accordingly, none of the decisions concerning his initial and continued pre-trial detention contained evidence capable of establishing a plausible link between his actions – namely, his articles and tweets of a political nature – and the terrorism-related offences of which he was accused. The interpretation and application of the legal provisions relied on by the domestic authorities had thus been unreasonable to the point of rendering Mr Taş's detention unlawful and arbitrary.

The Court also held that the applicant's detention had amounted to an interference with his right to freedom of expression that had not been prescribed by law.

The Court further found that, even though Mr Taş had not been allowed unlimited access to the evidence, he had been sufficiently acquainted with the content of those items of evidence that were essential in order to effectively challenge the lawfulness of his detention.

Lastly, the Court dismissed the applicant's complaint concerning the length of the proceedings before the Constitutional Court.

Detention of a journalist owing to unreasonable equation of their editorial stance with propaganda in favour of terrorist organisations

[Sabuncu and Others v. Turkey](#), application no. [23199/17](#), judgment 19 April 2021

The case concerned the applicants' initial and continued pre-trial detention on account of the editorial stance taken by the daily newspaper Cumhuriyet in its articles and in posts on social media, criticising certain government policies.

The European Court of Human Rights held unanimously, that there had been a violation of Article 5 § 1 (right to liberty and security) and of Article 10 (freedom of expression) of the European Convention on Human Rights. It also held unanimously, that there had been no violation of Article 5 § 4 (right to speedy review of the lawfulness of detention).

The Court found in particular that:

- the decisions of the domestic courts ordering the applicants' initial and continued pre-trial detention had been based on mere suspicion that did not reach the required level of reasonableness;
- the acts for which the applicants had been held criminally responsible came within the scope of public debate on facts and events that were already known, amounted to the exercise of Convention freedoms, and did not support or advocate the use of violence in the political sphere or indicate any wish on the applicants' part to contribute to the illegal objectives of terrorist organisations, namely, to use violence and terror for political ends;
- the applicants' pre-trial detention in the context of the criminal proceedings against them, for offences carrying a heavy penalty and directly linked to their work as journalists, had amounted to an actual and effective constraint and constituted "interference" with the exercise of their right to freedom of expression;
- the interference with the exercise of the applicants' right to freedom of expression had not been prescribed by law, as Article 100 of the Turkish Code of Criminal Procedure required the existence of factual evidence giving rise to strong suspicion that the person concerned had committed an offence, which had not been the case here.

Detention of a journalist, imposition of restrictions on his right to receive and subscribe to socio-political newspapers or magazines and a de facto ban on having any contact (meetings, telephone calls or correspondence) with the outside world.

[Mirgadirov v. Azerbaijan and Turkey](#), application No. [62775/14](#), judgment 17 December 2020

The applicant, a well-known journalist, was subjected to a de facto outright ban from having any contact (meetings, telephone calls or correspondence) with the outside world, save for his lawyers, while in detention. In addition, restrictions were imposed on the applicant's right to receive and subscribe to socio-political newspapers or magazines.

The European Court of Human Rights held, unanimously, that there had been a violation of Article 5 § 1 (liberty and security) of the European Convention on Human Rights over the absence of a reasonable suspicion of a criminal offence, and over the applicant's detention from 19 to 20 November 2014 in the absence of a court order. According to the Court, a violation of Article 5 § 4 (judicial review of the lawfulness of detention) on account of the domestic

courts' failure to assess the applicant's arguments in favour of his release, therefore resulting also in the violation of Article 6 § 2 (presumption of innocence). The court reiterated that on the absence of relevant and sufficient reasons for such interference, a violation of Article 8 (right to respect for private and family life) was identified.

Arrest and pre-trial detention of anti-government journalist

Ilıcak v. Turkey (no. 2), application No. [1210/17](#), judgment 20 June 2022

The case concerned the arrest and pre-trial detention of Nazlı Ilıcak following the attempted coup of 15 July 2016 in Turkey. Ms Ilıcak is a famous journalist who is known for her critical views on the policies of the current government.

The Court found, by six votes to one, that there had been a violation of Article 5 § 1 (right to liberty and security) of the Convention. The Court took the view that there had been no plausible reason to suspect Ms Ilıcak of committing the offences of belonging to a terrorist organisation or of attempting to overthrow the government or of hindering its functioning. In particular, the Court noted that the writings on which the charges against the applicant and her detention had been based concerned matters of public interest relating to facts and events that were already known, fell within the scope of Convention freedoms and neither supported nor promoted the use of violence in the political domain. Nor had they reflected any possible intention on the applicant's part to contribute to the illegal aims of terrorist organisations, namely the use of violence and terror for political ends, or to overthrow the government or the constitutional order. It could not therefore be considered acceptable for the authorities in the present case to have based their accusations of terrorist activities merely on the applicant's work as a journalist in certain media outlets and in particular on her tweets² expressing doubts about the possible perpetrators of the attempted coup.

The Court held, by six votes to one, that there had been a violation of Article 10 (freedom of expression). The Court found that the pre-trial detention measure imposed on Ms Ilıcak – in the context of criminal proceedings against her for offences that were severely punished and were directly related to her work as a journalist – constituted an "interference" with her right to freedom of expression. In the Court's view that interference had not been prescribed by law.

The Court held, unanimously, that there had been no violation of Article 5 § 4 (length of proceedings before the Turkish Constitutional Court). The Court observed that the period to be taken into consideration had lasted 15 months and two days during the state of emergency. Its findings in *Mehmet Hasan Altan*³, *Şahin Alpay*⁴ and *Sabuncu and Others*⁵ were also valid in the present case and thus there had been no violation of Article 5 § 4 of the Convention.

Pre-trial detention of a journalist without a court order and failure to justify the need for a deprivation of liberty

Haziye v. Azerbaijan, application No. [19842/15](#), judgment of 06.12.2018

The applicant used to write for the newspaper Azadliq and was the presenter of a TV show that was critical of the government. On 29 August 2014, he was allegedly assaulted on his way to work, and he defended himself. The next day, he was charged with criminal hooliganism having caused minor bodily harm by hitting his assailant with a glass water bottle and punching and kicking him. The Absheron District Court ordered his pre-trial detention for a period of two months, referring to the risk of re-offense and obstruction of the investigation. Repeating the previous grounds, the courts dismissed Haziye's appeal, as well as three subsequent applications to be released on bail or put on house arrest. The courts also dismissed his application against his continued detention after his pre-trial detention period had expired. On 29 January 2015, Haziye was convicted of hooliganism and sentenced to 5 years of imprisonment. He was released on 29 August 2019 upon full completion of his sentence.

The European Court of Human Rights found a violation of Article 5 § 1 of the Convention, noting that the applicant had been detained from 29 October (when the first order to detain him had expired) to 11 November 2014 (when the courts dismissed the last of his applications to be released) without any judicial order authorising his detention. Having examined the same complaint in many cases against Azerbaijan and found that the applicants' detention had not been based on a court order and had therefore been unlawful under Article 5 § 1 of the Convention, the Court saw no reason to reach a different conclusion in the instant case. Under Article 5 § 3 of the Convention, the Court found that, when ordering Mr Haziye's pre-trial detention, the courts had simply repeated that there was a risk of him reoffending and

obstructing the investigation, using a standard template. They did not give any reasons why they considered those grounds relevant to the specific circumstances of the case and had failed to give any reasons at all when extending the detention. The Court concluded that the authorities had failed to give “relevant” and “sufficient” reasons to justify the need for pre-trial detention.

Requirement that safeguards against arbitrariness be embedded in domestic law and procedure

Mehmet Hasan Altan v. Turkey, application No. [13237/17](#), judgment of 20.03.2018

Ahmet Hüsrev Altan v. Turkey, application No. [13252/17](#), judgment of 20.03.2018

Sahin Alpay v. Turkey, application No. [16538/17](#), judgment of 20.03.2018

Prior to the attempted coup d’Etat of 15 July 2016, the applicants were journalists and anchors with media that were shut down following the adoption of Legislative Decree no. 668. Mehmet Hasan Altan was arrested on 10 September 2016 on suspicion of having links to the FETÖ/PDY affiliated to Gülen. The Istanbul 10th Magistrate’s Court remanded him on 22 September 2016. He repeatedly applied without success to be released pending trial. On 14 April 2017, the prosecution filed an indictment with the Istanbul 26th Assize Court accusing the applicants of attempting to overthrow the constitutional order, the Turkish Grand National Assembly and the government by force and violence, and of committing offences on behalf of a terrorist organisation without being members of it. On 11 January 2018, the Constitutional Court found a violation of the Altan’s right to liberty and security and right to freedom of expression and of the press. Despite the Constitutional Court’s judgment, the Istanbul 26th Assize Court rejected his subsequent application for release, and on 16 February 2018, sentenced him to aggravated life imprisonment.

The European Court of Human Rights held that the applicant’s continued pre-trial detention, after the Constitutional Court’s judgment of 11 January 2018 finding a violation of the Constitution, could not be regarded as “lawful” and “in accordance with a procedure prescribed by law”. The Court observed that the reasons given by the Istanbul 26 Assize Court in rejecting Altan’s application for release, following a “final” and “binding” judgment delivered by the supreme constitutional judicial authority, could not be regarded as satisfying the requirements of Article 5 § 1. It held that for another court to call into question the powers conferred on a constitutional court to give final and binding judgments on individual applications ran counter to the fundamental principles of the rule of law and legal certainty, which were inherent in the protection afforded by Article 5 and were the cornerstones of the guarantees against arbitrariness.

Under Article 10 of the Convention, the Court found that there was no reason to reach a different conclusion from that of the Constitutional Court, which had found that Altan’s initial and continued pre-trial detention, following his expression of his opinions, constituted a severe measure that could not be regarded as a necessary and proportionate interference in a democratic society. In that regard, it pointed out that criticism of governments and publication of information regarded by a country’s leaders as endangering national interests should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda. Under Article 5 § 4 of the Convention, the Court found that the length of proceedings in the Constitutional Court (14 months and three days) was exceptional in the present case, especially on account of the complexity of the case and the Constitutional Court’s current caseload.

Arbitrary imprisonment of a journalist following domestic courts’ failure to address legitimate concerns about possible “planting” of evidence on him

Sakit Zahidov v. Azerbaijan, application No. [51164/07](#), judgment of 12.11.2015

The applicant, a journalist, satirist and poet working for the newspaper Azadliqas, was arrested and taken to local police premises where a search was conducted, and drugs were found in one of his pockets. He was later convicted of illegal possession of drugs. Before the domestic courts, the applicant claimed that the drugs had been planted on him by the police officers.

The European Court of Human Rights found a violation of Article 6 (right to a fair trial) of the Convention, noting some concerns regarding the circumstances in which the physical evidence had been obtained. Firstly, the search of the applicant had not been carried out immediately following the arrest, but twenty minutes later, nowhere near the place of arrest. The time lapse between the arrest and search raised legitimate concerns about possible “planting” of the evidence, because the applicant was completely under the police’s control during that time. Secondly, the domestic

courts had declined to examine a copy of the video-recording of the search. Thirdly, the applicant's arrest was not immediately documented by the police and the applicant was not represented by a lawyer during his arrest or the search. Overall, the quality of the physical evidence on which the domestic courts' guilty verdict was based was questionable because the manner in which it had been obtained cast doubt on its reliability.

Reporter's apprehension and detention for disobeying the police while covering a demonstration

Pentikäinen v. Finland [GC], application No. [11882/10](#), judgment of 20.10.2015

The applicant, a photographer and journalist employed by the weekly Suomen Kuvalehti, was sent by his employer to take photos of a protest. As the protest turned violent, the police cordoned off the area and ordered the crowd to disperse; the applicant remained in the area, where a small group of demonstrators was still gathered, to cover the events. Together with them he was apprehended and held in police custody from around 9:30 p.m. until his release the next day at 3 p.m. The Helsinki District Court convicted the applicant of disobeying the police, the judgment being upheld on appeal and by the Supreme Court. The courts did not impose any penalty, finding that the offence was excusable since as a journalist, he had been faced with contradictory obligations imposed on the one hand by the police and on the other by his employer.

The European Court of Human Rights noted that the applicant's apprehension had taken place in the cordoned-off area where he had remained with a core group of demonstrators. From the video recordings of the event in the case file, it appeared that he had not been wearing any distinct signs which would have identified him as a journalist, nor had his press badge been visible. The Court held that, while the police had been informed of his journalist status at the latest at the police station, when a police officer had taken his press card, Pentikäinen had failed to make it sufficiently clear during the events that he was a journalist. By not obeying the orders given by the police, Pentikäinen had knowingly taken the risk of being apprehended.

The domestic courts had found it established that he had been aware of the police orders to leave the scene but that he had decided to ignore them. Nothing suggested that he could not have continued to exercise his professional assignment in the vicinity of the cordoned-off area.

As to his detention, the Court noted that the journalist had been one of the first of the people apprehended to be interrogated by the police and shortly after he had been released. The camera equipment and the photographic material had been returned to him entirely and unaltered.

As to his conviction, the Court noted that the journalist had been found guilty of disobeying the police, but that no penalty had been imposed. His conviction had had no adverse consequences for him, as in accordance with domestic law, it had not been entered in his criminal record.

Length and reasonableness of pre-trial detention of investigative journalists accused of aiding and abetting a criminal organisation

Sik v. Turkey, application No. [53413/11](#), judgment of 08.07.2014

Nedim Sener v. Turkey, application No. [38270/11](#), judgment of 08.07.2014

The applicants were two investigative journalists. In March 2011 the police searched their homes and took them into police custody, before accusing them of having participated in the production of publications criticising the government and serving as propaganda for the criminal organisation "Ergenekon", whose members were convicted of fomenting a coup d'Etat. The applicants were not released until March 2012.

The European Court of Human Rights found violation of Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial), Article 5 § 4 (speedy decision over the lawfulness of detention) and Article 10 (freedom of expression) of the Convention, holding that, in accusing the applicants from the outset of the investigation of "serious terrorist offences" and in presuming a need to keep them in pre-trial detention, the authorities had based that detention on reasons that were neither "relevant" nor "sufficient" to justify its length. In its view, it was doubtful whether it was necessary to remand the accused in custody for over a year in the context of a preliminary investigation. The reasons given for refusing the applicants' requests for release on bail during the first year of the criminal investigation had not

been substantiated and lack of detailed reasons meant that there had been no specific evidence demonstrating the need to keep the applicants in pre-trial detention. A stereotyped list of general reasons was not sufficient to compensate for this deficiency.

The Court further noted that both applicants had been accused of using “black propaganda” methods to insidiously undermine public confidence in the judiciary. It observed that this act as such was not punishable under the Turkish Criminal Code. Even if the books in question had contained assertions that were untrue, the offences of defamation or bringing pressure to bear on the judiciary were less serious in nature than the crimes of belonging to or assisting a terrorist organisation and did not warrant such a long period of pre-trial detention.

The Court also found that proceedings concerning an appeal against detention had to be adversarial and to guarantee equality of arms between the prosecution and the person in detention. The method chosen by the domestic legislation had to guarantee that each party was made aware of any observations submitted and had a genuine opportunity of commenting on them. The Court noted that, whereas the prosecution’s accusations against the applicants had been based mainly on documents and computer files seized on the premises of third parties rather than those of the applicants, the prosecution had refused the applicants permission to examine these items of evidence. The Court thus considered that neither the applicants nor their lawyer had had sufficient knowledge of the content of the documents, which were of crucial importance for challenging the lawfulness of their detention.

The Court then considered that, in detaining the applicants for such a long period without relevant or sufficient reasons, the judicial authorities had a chilling effect on the applicants’ willingness to express their views on matters of public interest. Applying a custodial measure in this manner was liable to create a climate of self-censorship for any investigative journalist planning to carry out research and comment on the conduct and actions of State bodies. The applicants’ placement in pre-trial detention and their continued detention for over a year had not met a pressing social need. The measures at issue had not been proportionate to the legitimate aims pursued and thus had not been “necessary” in a democratic society.

Police power to stop and search persons – including journalists – without reasonable suspicion of wrongdoing

Gillan and Quinton v. the United Kingdom, application No. [4158/05](#), judgment of 12.01.2010

The applicants were stopped and searched by the police while on their way to a demonstration. Gillan was riding a bicycle and carrying a rucksack. Quinton, a journalist, was stopped and searched despite showing her press cards.

The European Court of Human Rights noted that the stop and search powers under the Terrorism Act were not sufficiently circumscribed or subject to adequate legal safeguards against abuse. It observed that although the length of time during which each applicant was stopped and search did not in either case exceed 30 minutes, during this period the applicants were entirely deprived of any freedom of movement.

They were obliged to remain where they were and submit to the search and, if they had refused, they would have been liable to arrest, detention at a police station and criminal charges. This element of coercion is indicative of a deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

The Court was struck by the extent to which police officers resorted to the stop and search powers. Noting the large number of searches involved and the reports by an independent reviewer, it found that there was a clear risk of arbitrariness in granting such broad discretion to police officers, and there was a risk that such a widely framed power could be misused against protestors. Similarly, judicial review or an action in damages to challenge the exercise of the stop and search powers were unlikely to succeed, as the absence of any obligation to show reasonable suspicion made it almost impossible to prove that the powers had been improperly exercised, therefore violating Article 8 (right to respect for private life) of the Convention.

Other relevant Council of Europe instruments

Committee of Ministers

[Declaration](#) on the desirability of international standards dealing with forum shopping in respect of

defamation, “libel tourism”, to ensure freedom of expression (4 July 2019)

Recommendation [Rec\(2016\)4](#) to Member States on the protection of journalism and safety of journalists and other media actors (13 April 2016)

[Declaration](#) on the protection of journalism and safety of journalists and other media actors (30 April 2014)

[Guidelines](#) on eradicating impunity for serious human rights violations (30 March 2011)

[Rec\(2007\)11](#) to Member States on promoting freedom of expression and information in the new information and communications environment (including Guidelines on protecting freedom of expression and information in times of crisis) (26 September 2007)

[Declaration](#) on the protection and promotion of investigative journalism (26 September 2007)

Recommendation [Rec\(2006\)13](#) to Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse (27 September 2006)

Recommendation [Rec\(2006\)8](#) to Member States on assistance to crime victims (14 June 2006)

Recommendation [Rec\(2006\)2](#) to Member States on the European Prison Rules (11 January 2006)

Recommendation [Rec\(2005\)10](#) to Member States on “special investigation techniques” in relation to serious crimes including acts of terrorism (20 April 2005)

[Declaration](#) on freedom of expression and information in the media in the context of the fight against terrorism (2 March 2005)

Recommendation [Rec\(2003\)13](#) to Member States on the provision of information through the media in relation to criminal proceedings (10 July 2003)

Recommendation [Rec\(2002\)2](#) to Member States on access to official documents (21 February 2002)

Recommendation [Rec\(2001\)10](#) to Member States on the European Code of Police Ethics (19 September 2001)

Recommendation [Rec\(2000\)7](#) to Member States on the right of journalists not to disclose their sources of information (8 March 2000)

Recommendation [R\(96\)4](#) to Member States on the protection of journalists in situations of conflict and tension (3 May 1996)

Parliamentary Assembly

Resolution [2212\(2018\)](#) “The protection of editorial integrity” (25 April 2018)

Parliamentary Assembly: Protection of editorial integrity, [Report 14526](#) by Volodymyr Arieu (9 April 2018)

Resolution [2141\(2017\)](#) “Attacks against journalists and media freedom in Europe” (24 January 2017)

Attacks against journalists and media freedom in Europe, [Report 14229](#) by Volodymyr Arieu (9 January 2017)

Resolution [2116\(2016\)](#) “Urgent need to prevent human right violations during peaceful protests” (27 May 2016)

Urgent need to prevent human rights violations during peaceful protests, [Report 14060](#) by Mehmeti Devaja (10 May 2016)

Resolution [2077\(2015\)](#) “Abuse of pre-trial detention in States Parties to the European Convention on Human Rights” (1 October 2015)

Abuse of pre-trial detention in States Parties to the European Convention on Human Rights, [Report 13863](#) by Pedro Agramunt (7 September 2015)

Resolution [2066\(2015\)](#) “Media responsibility and ethics in a changing media environment” (24 June 2015)

Media Responsibility and ethics in a changing media environment, [Report 13803](#) by Volodymyr Arieu (8 June 2015)

Resolution [2035\(2015\)](#) “Protection of the safety of journalists and of media freedom in Europe” (29 January 2015)

Protection of media freedom, [Report 13664](#) by Gvozden Flego (12 January 2015)

Resolution [1920\(2013\)](#) “The state of media freedom in Europe” (24 January 2013)

The state of media freedom in Europe, [Report 13078](#) by Mats Johansson (7 December 2012)

Resolution [1838\(2011\)](#) “Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations” (6 October 2011)

Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations, [Report 12714](#) by Dick Marty (19 September 2011)

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