European Court of Human Rights: *Müyesser Uğur v. Türkiye*

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Journalists revealing information states would rather keep under wraps may face serious repercussions. A case in point is the ECtHR's recent judgment in *Müyesser Uğur v. Türkiye*, Application No. 45738/22.

The case concerned the pre-trial detention of an investigative journalist (the applicant), based on her allegedly soliciting and declassifying (prohibited) information in defiance of the Turkish Criminal Code. The six impugned articles, written by the applicant and published on news website *odatv.com*, concerned a military cooperation agreement between the Turkish Government and the Libyan Government of National Accord, and the deployment of Turkish military forces to Libya. The articles included information about individuals (in Turkish military ranks) involved in the mission in Libya, one of whose identities (that of Turkish commander M.G.) was revealed in one of the applicant's articles. The applicant had relied on information from source E.B., a sergeant at the Hadımköy Military Barracks. During one of their phone calls, the applicant had asked about the identity of the commander who would be sent to Libya to lead the mission. E.B. had revealed it was the then Deputy Chief of the General Staff (Genelkurmay İkinci Başkanı), M.G. Both E.B.'s and the applicant's phone were wiretapped, and both were subsequently arrested.

After the applicant had been interrogated about the nature of her contact with E.B., she was placed in pre-trial detention for five months. Her appeal against the pre-detention order was unsuccessful. 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, paragraph 1 of the Criminal Code, and to two years and six months' imprisonment for the offence of disclosing prohibited information under Article 336, paragraph 1 of the Criminal Code. The applicant appealed, but the conviction was upheld. Before the Turkish Constitutional Court, the applicant raised the issue of her pre-trial detention, arguing that it violated her right to liberty and freedom of expression, considering the order for pre-trial detention was directly linked to the (six) articles written by the applicant and the contact she had with her source and thus pertained to her work as a journalist.

The circumstances in the lead-up to a final judgment (e.g. a criminal conviction) can have a chilling effect on expression. Being placed in pre-trial detention is one such circumstance, constituting an interference with the applicant's freedom of

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expression. The heart of the matter before the ECtHR was whether the interference was necessary and whether a fair balance had been struck between the different interests at stake: the freedom of expression of the applicant in her capacity as a journalist, and the state's military and security interests.

While the national authorities took issue with six of the applicant's publications, these articles being the main evidence supporting the decision to place the applicant in pre-trial detention, the Court found that five of these articles could not support that decision for they did not contain classified elements. Only one of the articles did: the one in which the applicant had revealed commander M.G.'s identity. Whether or not the publication of that particular article could support the decision to place the applicant in pre-trial detention, and could thus be considered "necessary", depends on a weighing of certain factors: the interest at stake, the review of the measure by the domestic courts, the conduct of the applicant, and whether the measure imposed was, overall, proportionate.

The article concerned a matter of public interest and touched upon specific state interests. The Court accepts that the disclosure of the commander's identity affected both the state's interest in national security and the interests of the commander in question. The article could have significantly damaged these interests and the commander's personality rights. In that vein, 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" (paragraph 81). On the conduct of the applicant, the Court recognised that she did not obtain the information illegally and took note of her needing to act in accordance with "the tenets of professional journalism". She should have been conscious of the sensitivity of the information in question. At the same time, the Court noted the domestic courts had not shown appreciation for the applicant's freedom of expression: "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" (paragraph 87). Crucially, the pre-trial detention lasted five months and thus constituted a particularly grave interference with the applicant's freedom of expression, potentially having a significant chilling effect. The Court ruled that no fair balance had been struck between the various interests involved, finding a violation of Article 10 of the Convention.

ECtHR 6 October 2026, Müyesser Uğur v. Türkiye, Application No. 45738/22

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