PARTLY CONCURRING AND PARTLY DISSENTING OPINION OF JUDGE YÜKSEL

226. I voted with the majority in the present case in favour of finding a violation of Article 5 § 1 of the Convention, and voted against the finding of a violation regarding the applicant's complaint under Article 10 of the Convention.

227. As regards the applicant's complaint under Article 5 § 1 of the Convention, while I agree with the majority's position on the outcome, I respectfully dissociate myself from certain parts of the reasoning and approach adopted in the judgment, for the reasons set out below.

228. The case mainly concerns the placement in detention and continued detention of an applicant who is a journalist. In my view, in the present case, it is necessary to distinguish between two facts: the detention of a journalist in the context of criminal proceedings and the opening of criminal proceedings. With regard to the detention of a journalist, I subscribe to the outlines of the judgment and I believe that the use of such a measure must be exceptional unless there are compelling reasons.

229. The pre-trial detention of the applicant was ordered in December 2016 primarily on suspicion of disseminating propaganda in favour of terrorist organisations (see paragraph 11 of the judgment). Subsequently, his continued pre-trial detention was ordered on suspicion of disseminating propaganda in favour of terrorist organisations or assisting those organisations. I must express my concerns about this new classification of the criminal charges, namely as regards the charge of assisting terrorist organisations. In this connection I simply refer to the judgment of the Court of Cassation concerning the present case (see paragraphs 47-50 of the judgment). Indeed, from the outset the charges against the applicant were poorly classified, particularly in relation to the offence of assisting a terrorist organisation. Taking into account the applicant's relevant activities, I can accept that there was reasonable suspicion in relation to the offence of disseminating propaganda in favour of terrorist organisations. However, because the present judgment addresses the issue of the existence of reasonable suspicion in relation to both charges – disseminating propaganda in favour of terrorist organisations and assisting terrorist organisations – together, without making a distinction (in the light of paragraphs 1 and 3 of Article 5 taken together), and because I have serious doubts as to the presence of reasonable suspicion in relation to the offence of assisting terrorist organisations, I voted with the majority in favour of finding a violation of Article 5 § 1 of the Convention. Thus, I believe that there was a failure of classification on the part of the domestic courts, and share the view of the majority that the suspicion against the applicant did not reach the required minimum level of reasonableness in relation to the offence of assisting terrorist organisations.

230. As regards the applicant's complaint under Article 10 of the Convention, the majority considered that the interference with the applicant's rights and freedoms under Article 10 of the Convention could not be justified under the second paragraph of that provision, on the ground that it was not "prescribed by law". In reaching this conclusion, the majority merely relied on the finding of a violation of Article 5 § 1 of the Convention, without carrying out a further examination under Article 10 (see paragraphs 187-88 of the judgment). I have already expressed my disagreement with this approach in my concurring opinions in the cases of *Ragıp Zarakolu v. Turkey* (no. 15064/12, 15 September 2020) and *Sabuncu and Others v. Turkey* (no. 23199/17, 10 November 2020). In the present case, however, I voted against the finding of a violation of Article 10, for the following reason.

The applicant conducted an interview in the midst of a terrorist operation with one of the hostage-takers who had taken a prosecutor hostage and subsequently murdered him, and another interview with one of the PKK's leaders. In my view, it is understandable that these interviews and some of the applicant's other activities (certain social media posts, etc.) may not be considered just to be a matter of freedom of the press and may be the subject of a criminal investigation in order to ascertain whether they fall within the scope of that freedom. I accept that an extensive freedom of expression must apply to journalistic activities. But this freedom is also accompanied by duties and responsibilities, resulting in particular from the principle of responsible journalism, which is one of the principles developed in our Court's established case-law. In this regard, I refer to the following rulings of the Court which emphasise responsible journalism.

231. In the case of *Jersild v. Denmark* (23 September 1994, Series A no. 298), the Court found a violation of Article 10 of the Convention after carefully examining the journalist's attitude during the report in question (see paragraph 31 *in fine* of that judgment). In the judgments in *Sürek v. Turkey (no. 1)* ([GC], no. 26682/95, ECHR 1999-IV) and *Sürek v. Turkey (no. 3)* ([GC], no. 24735/94, 8 July 1999), the Court found that there had been no violation of Article 10, emphasising the duties of the journalists, and especially of the editors-in-chief of newspapers (see, in particular, § 63 of the *Sürek (no. 1)* judgment and § 41 of the *Sürek (no. 3)* judgment). In *Falakaoğlu and Saygılı v. Turkey* (nos. 22147/02 and 24972/03, § 34, 23 January 2007), the Court found no violation of Article 10, stressing the danger of providing a forum for leaders of criminal organisations and thus allowing the dissemination of terrorist propaganda. In *Saygılı and Falakaoğlu v. Turkey (no. 2)* (no. 38991/02, § 28, 17 February 2009), the Court found that the publication of statements by terrorist organisations could be subject to penalties if the message given was not a peaceful one.

232. Having regard to the above-mentioned case-law of the Court, the opening of criminal proceedings against the applicant in the present case

could be seen as justified. I do not wish to prejudice the outcome of the criminal proceedings pending before the domestic courts. Thus, in my opinion, it is premature to rule on those charges and there was no need to examine separately the interference with Article 10; accordingly, I do not agree with the majority's conclusion as to the violation of Article 10 of the Convention. In the light of the above, I consider that it was unnecessary to examine this complaint separately.