

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

SECOND SECTION

CASES OF KIŞANAK AND TUNCEL v. TÜRKİYE

(Applications nos. 82955/17 and 82956/17)

JUDGMENT

STRASBOURG

9 June 2026

This judgment is final but it may be subject to editorial revision.



In the case of Kışanak and Tuncel v. Türkiye,

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

Jovan Ilievski*, President*,
Gediminas Sagatys,
Hugh Mercer*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the applications 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 the applicants listed in the appended table ("the applicants"), on the various dates indicated therein;

the decision to give notice of the applications to the Turkish Government ("the Government"), 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;

the parties' observations;

the decision to reject the Government's objection to the examination of the applications by a Committee;

Having deliberated in private on 19 May 2026,

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

SUBJECT MATTER OF THE CASE

1. The applications concern the pre-trial detention of the applicants on suspicion of membership of an armed terrorist organisation under Article 314 § 2 of the Criminal Code. The applicants relied on Articles 5, 10, 11 and 18 of the Convention.

2. The applicants are well known political figures, particularly for their engagement with the "Kurdish question" (for more details, see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 28-61, 22 December 2020). Both applicants had been elected to the Turkish Parliament as independent deputies in the 2007 and 2011 legislative elections, and afterwards joined the Party for a Democratic Society (*Demokratik Toplum Partisi*) and subsequently the Peace and Democracy Party (*Barış ve Demokrasi Partisi – "the BDP"*) — pro-Kurdish political parties that preceded the Peoples' Democratic Party (*Halkların Demokratik Partisi – "the HDP"*). The first applicant, Ms Kışanak, was the co-chair of the BDP from 2011 to 2014, and she was elected as mayor of the Diyarbakır Metropolitan Municipality from the BDP in the local elections in 2014, a position she held at the time of her detention. The second applicant, Ms Tuncel, also held senior positions in several pro-Kurdish parties, including the HDP co-chair from 2013 to 2014. At the time of her detention,

she was the co-chair of the Democratic Regions Party (*Demokratik Bölgeler Partisi*), a sister party of the HDP.

I. THE FIRST APPLICANT'S ARREST AND PRE-TRIAL DETENTION

3. On 25 October 2016 the first applicant was arrested at Diyarbakır Airport in relation to a criminal investigation initiated by the Diyarbakır chief public prosecutor's office into her alleged links to the activities of an illegal armed organisation – namely, the PKK/KCK (Workers' Party of Kurdistan/Kurdistan Communities Union).

4. On 30 October 2016 the Diyarbakır 1st Magistrate's Court ordered that the first applicant be placed in pre-trial detention on suspicion of being a member of an armed terrorist organisation. The magistrate determined that there was a strong suspicion that she had committed the offence in question on the basis of the following:

(i) her participation (on various dates between 2011 and 2016) in numerous programmes, demonstrations, rallies, funerals, and press events organised at the request of the PKK/KCK to promote its activities and to obstruct State security forces, during which she had, *inter alia*, referred to Abdullah Öcalan (the leader of the PKK) in a respectful manner and to deceased members of the organisation as "martyrs", and had frequently used separatist terms such as "Kurdistan";

(ii) her extensive involvement in the activities of the Democratic Society Congress (DTK – which, according to the authorities, had been established on Abdullah Öcalan's orders, operated as a "constituent assembly" of the PKK/KCK, and conducted activities linked to that organisation), including giving speeches at DTK events;

(iii) the use of municipal resources to hold funerals for terrorists for propaganda purposes, at which flags and banners of the PKK/KCK and photos of militants had been displayed on official State vehicles;

(iv) the designation of part of the Bağlar district municipal cemetery as a "PKK martyrs' graveyard";

(v) a commemoration held in the municipal council building for a deceased PKK member, at which the PKK's colours and symbols had been displayed;

(vi) the discovery (during police searches of municipal buildings) of publications which, according to the detention order, promoted the PKK's ideology and sought to legitimise attacks with firearms and bombs, which had allegedly been put on sale to attract financial support for that organisation; and

(vii) the seizure at the first applicant's residence of a CD containing Turkish and English documents featuring municipal emblems which allegedly blamed State forces for acts of destruction in Diyarbakır, legitimised the PKK, portrayed its fighters and those of the Patriotic

Revolutionary Youth Movement (YDG-H) as "opposition forces", and assigned responsibility for terrorist acts to the State.

5. On 11 November 2016 the public prosecutor filed an indictment against the first applicant, accusing her of the offences of establishing or leading an armed terrorist organisation, disseminating propaganda in favour of a terrorist organisation (on 41 counts), participating in unlawful meetings and demonstrations, and failing to leave an unlawful gathering of her own accord despite having been ordered to do so. In the indictment, it was alleged that the first applicant had taken part in the founding of the DTK, which, according to the authorities, had been established to expand the base of the PKK/KCK terrorist organisation. She had also participated in numerous events organised by the DTK, at which she had delivered speeches containing propaganda in favour of the PKK/KCK.

6. On 28 November 2016 the Diyarbakır 8th Assize Court accepted the indictment. On 22 February 2017 the Malatya 1st Assize Court, to which the case had been transferred, extended the first applicant's pre-trial detention, referring to the evidence in the case file, the nature of the offence and the duration of the potential sentence. Her detention was extended several times until 16 May 2024 and the objections against these decisions were rejected by the relevant courts.

7. On 5 May 2017 the first applicant lodged an individual application with the Constitutional Court, complaining of violations of Articles 5 and 10 of the Convention and Article 3 of Protocol No. 1 as a result of her initial and continued detention. On 17 July 2017 she lodged a second individual application with the Constitutional Court, complaining of violations of Articles 5, 10 and 18 of the Convention due to her initial and continued detention. She lodged the present application with the Court on 12 September 2017.

8. On 10 October 2018 the Constitutional Court ruled her first individual application inadmissible for being manifestly ill-founded. In assessing in particular whether there was a reasonable suspicion, for the purposes of Article 5 § 1 of the Convention, that the first applicant had committed an offence, the Constitutional Court noted that the investigating authorities had referred to speeches in which she had described acts committed by certain PKK members as acts of resistance and defence, and had characterised the killing of those members as an act of war and an atrocity, thus praising and legitimising the PKK's armed struggle. Noting that those speeches had been delivered in Diyarbakır, one of the places where the campaign of trench-digging had been at its most intense (for a detailed description of the "trench events", see *Selahattin Demirtaş*, cited above, §§ 17-54), the Constitutional Court held that it was not unreasonable that the investigating authorities – having taken into account the first applicant's political position and the times and places at which the speeches had been delivered, as well as

their content and context – had considered that her statements indicated that a terrorism-related offence had been committed.

9. On 7 February 2019 the Constitutional Court declared her second individual application also inadmissible, for being substantially the same as her previous application, which that court had declared inadmissible for being manifestly ill-founded on 10 October 2018.

II. THE SECOND APPLICANT'S ARREST AND PRE-TRIAL DETENTION

10. On 4 November 2016 the second applicant was arrested by the authorities at a demonstration in front of the Diyarbakır courthouse, where she had been protesting against the arrest of members of parliament and chairpersons of the Peoples' Democratic Party (HDP). A criminal investigation was initiated by the Diyarbakır chief public prosecutor's office into her alleged links to the activities of an illegal armed organisation – namely, the PKK/KCK.

11. On 6 November 2016 the Diyarbakır 2nd Magistrate's Court ordered that the second applicant be placed in pre-trial detention on suspicion of being a member of an armed terrorist organisation. The magistrate determined that there was a strong suspicion that she had committed the offence in question on the basis of the following:

(i) her participation in meetings of the DTK (an entity which, according to the authorities, had been established on the orders of Abdullah Öcalan and presented itself as operating legally, while pursuing illegal activities), as established by statements made by an anonymous witness and another suspect in the same criminal investigation;

(ii) statements made by the second applicant between December 2015 and August 2016 in which she had allegedly praised the PKK and its convicted leader, described the PKK's violent acts as acts of "resistance", referred to deceased militants as "martyrs", and characterised the unlawful "trench events" and attempts to establish autonomous administrations as "legitimate resistance"; and

(iii) her attendance at funerals of deceased militants which the PKK had called on its supporters to attend, and her use of threatening rhetoric against security forces during unlawful demonstrations.

12. On 22 November 2016 the public prosecutor filed an indictment against the second applicant, accusing her of the offences of being a member of an armed terrorist organisation, and disseminating propaganda in favour of a terrorist organisation. In the indictment, speeches delivered by her at different times and places were cited as the basis of the accusations. The indictment also described the process by which the PKK/KCK had been established and the organisation's structure – particularly in respect of the foundation and purpose of the DTK – and *modus operandi*. It then outlined

the speeches given and acts undertaken by the second applicant which formed the subject of the accusation.

13. On 30 November 2016 the Diyarbakır 8th Assize Court accepted the indictment. On 22 February 2017 the Malatya 1st Assize Court, to which the case had been transferred, extended the second applicant's pre-trial detention. On 21 April 2017 that court refused an application lodged by the second applicant asking that she be released. On 2 May 2017 the Malatya 2nd Assize Court dismissed an objection lodged by her against that decision, referring to the evidence in the case file, the nature of the offence and the duration of the potential sentence. Her detention was extended several times until 16 May 2024 and the objections against these decisions were rejected by the relevant courts.

14. On 18 May 2017 the second applicant lodged an individual application with the Constitutional Court, complaining of violations of Articles 5, 10 and 18 of the Convention as a result of her initial and continued detention. She lodged the present application with the Court on 12 September 2017.

15. On 10 October 2018 the Constitutional Court found her application inadmissible for being manifestly ill-founded.

16. In assessing whether there was a reasonable suspicion, for the purposes of Article 5 § 1 of the Convention, that the second applicant had committed an offence, the Constitutional Court referred to the findings of the Diyarbakır 2nd Magistrate's Court (see paragraph 11 above), which stated that she had participated in meetings of the DTK, thereby leading to the suspicion that she was a member of that organisation. It further noted that in speeches in 2015 and 2016, the second applicant had praised the PKK and its leader. She had described the PKK's violent acts as acts of "resistance" and referred to deceased PKK members as "martyrs". During the period when the PKK had committed terrorist acts (for example, digging trenches) to establish autonomous administrations, she had described and legitimised those acts as acts of resistance. The Constitutional Court further noted that the speeches in question had been given at a time when terrorist attacks and violence initiated by the PKK had posed an increasingly significant threat to national security across many parts of the country, including Hakkari (the second applicant's electoral district). Following that assessment, the Constitutional Court concluded that it could not be said to be unfounded that the investigating authorities – having taken into account the second applicant's political position and the times and places at which the speeches had been delivered, as well as their content and context – had considered the above-mentioned statements to have praised members of a terrorist organisation and to have sought to legitimise their actions. Accordingly, accepting those speeches as strong indications of the commission of an offence could not be regarded as groundless.

III. THE CRIMINAL PROCEEDINGS AGAINST THE FIRST AND SECOND APPLICANTS

17. After it had accepted the indictments against them, the Diyarbakır 8th Assize Court joined the cases against the first and second applicants. On 3 February 2017 the court decided to transfer the case to the Malatya 1st Assize Court for security reasons. On 1 February 2019 that court found the first applicant guilty of the offences of membership of an armed terrorist organisation and disseminating propaganda in favour of a terrorist organisation. It sentenced her to 10 years and 15 months' imprisonment for the offence of membership of an armed terrorist organisation, and to 1 year and 24 months' imprisonment for the offence of disseminating propaganda. It also found the second applicant guilty of the same offences and sentenced her to 9 years and 9 months' imprisonment for the offence of membership of an armed terrorist organisation, and to 1 year and 24 months' imprisonment for the offence of disseminating propaganda. On 17 July 2019 the Gaziantep Regional Court of Appeal quashed those convictions but ordered that the applicants remain in pre-trial detention.

18. According to publicly available information, both applicants were released from detention on 16 May 2024.

THE COURT'S ASSESSMENT

IV. JOINDER OF THE APPLICATIONS

19. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

V. PRELIMINARY OBJECTION AS TO THE ADMISSIBILITY OF THE APPLICATIONS

20. The Government invited the Court to declare the applications inadmissible for non-exhaustion of domestic remedies, arguing that the applicants had submitted their applications to the Court while their individual applications before the Constitutional Court had still been pending.

21. The Court's well-established case-law shows that it allows the last stage of a particular remedy to be reached after the application has been lodged but before its admissibility has been determined (see *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 107, 20 March 2018, and *Şahin Alpay v. Turkey*, no. 16538/17, § 86, 20 March 2018).

22. The applicants in the present case lodged their applications with the Court on 12 September 2017. The individual applications which they had lodged with the Constitutional Court were declared inadmissible on

10 October 2018 – that is, before the Court's decision on admissibility. This general objection by the Government must therefore be dismissed.

VI. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

23. Relying on Article 5 §§ 1 and 3 of the Convention, the applicants complained that they had been detained in the absence of a "reasonable suspicion" that they had committed a criminal offence. They further complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the necessity of their continued detention.

A. Admissibility

24. The Government asserted that the applicants had not explicitly raised their complaints under Article 5 § 3 of the Convention in their individual applications before the Constitutional Court. Additionally, the applicants had failed to lodge a compensation claim under Article 141 of the Code of Criminal Procedure. They contended that, by way of that procedure, the applicants could have challenged the lawfulness of their pre-trial detention and the alleged lack of reasoning in the decisions ordering their detention. The applicants rejected the Government's arguments.

25. The Court observes, on the basis of copies of the individual application forms submitted to the Constitutional Court, that both applicants explicitly relied on Article 5 § 3 of the Convention before that court. They also complained of the lack of reasoning in the decisions ordering their detention.

26. As to a compensation claim under Article 141 of the Code of Criminal Procedure, the Court has already examined and dismissed identical preliminary objections by the Government in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 205-14, 22 December 2020). Having reviewed the parties' submissions, the Court sees no reason to depart from its findings in that case.

27. The Government's objections of non-exhaustion of domestic remedies must therefore be dismissed. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

28. The applicants submitted that the prosecution and the domestic courts had failed to provide reasonable evidence that they had committed the criminal offence of which they had been suspected. They further alleged that the detention orders had lacked relevant and sufficient reasoning.

29. The Government argued that the applicants had been placed in detention on the basis of concrete evidence that they had committed the offence of membership of an armed terrorist organisation. They stated that, at the time of their pre-trial detention, there had been sufficient evidence to convince an objective observer that they were members of the DTK, that they had had an extensive and effective role in its activities, and that the DTK acted in accordance with orders given by PKK leaders. Furthermore, they submitted that the applicants' attendance and speeches at demonstrations, meetings, press events, and funerals of PKK members demonstrated their links with the PKK. Additionally, the Government submitted that the domestic courts had provided relevant and sufficient reasons to justify the applicants' pre-trial detention. Lastly, the Government emphasised that the applicant's complaints under Article 5 should be examined with due regard to the derogation of which the Secretary General of the Council of Europe had been notified on 21 July 2016 under Article 15 of the Convention.

1. Alleged lack of a reasonable suspicion that the applicants committed a criminal offence (Article 5 § 1 of the Convention)

30. In respect of the general principles established in its case-law, the Court refers to *Selahattin Demirtaş* (cited above, §§ 311-21).

31. The Court notes that the crux of the matter is whether, at the time of the applicants' detention, there was a reasonable suspicion that they had committed the offence with which they had been charged, within the meaning of sub-paragraph (c) of Article 5 § 1 of the Convention. The Court observes that the applicants were suspected of having committed the offence of membership of an armed terrorist organisation.

32. The suspicion against both applicants was based on two main elements: (i) the assessment by the investigating authorities that the DTK was linked to the PKK, and the applicants' membership of the DTK, as well as their participation in events organised by it, and (ii) the applicants' attendance at several demonstrations and events, including the funerals of deceased members of the PKK, as well as the speeches given by them at numerous events in south-east Türkiye in which they had, *inter alia*, referred to Abdullah Öcalan in a respectful manner and to deceased members of the organisation as "martyrs", frequently used separatist terms such as "Kurdistan", and described the PKK's violent acts and attempts to establish autonomous administrations as acts of "resistance". The investigating authorities advanced two additional elements in respect of the first applicant: (iii) the decision to allow funerals of deceased members of the PKK (where flags and banners of the organisation and photos of militants had been displayed on official State vehicles), to organise a commemoration event for a deceased PKK member in the municipal council building, to designate part of a municipal cemetery as a "PKK martyrs' graveyard", and to allocate municipal resources for those activities; and (iv) the material found during

police searches of municipal buildings and the first applicant's residence, which, according to the authorities, promoted the organisation's ideology and legitimised its attacks (see paragraphs 5-6 and 11 and 13 above).

33. As regards the first element, the Court observes that the domestic authorities cited the applicants' role within the DTK as one of the main reasons for the suspicion against them. In that connection, it refers to the finding in *Tuğluk v. Türkiye* (no. 71757/17, §§ 98-102, 14 October 2025) that the assertion that the DTK had been an unlawful entity or was involved in any criminal activity was not supported by sufficiently concrete evidence. Noting that the Government's submissions in this respect are identical to those examined in Ms Tuğluk's case, the Court sees no reason to depart from its conclusions in that judgment. Accordingly, in the present case, the accusations concerning the fact that the applicants had been members of the DTK and their involvement and participation in events organised by the DTK cannot be considered capable of convincing an objective observer that they had committed the offence of membership of an armed terrorist organisation.

34. Concerning the second element, the Court observes that the statements in question, which were considered to constitute grounds for suspicion against the applicants, were principally political speeches given during their participation in certain public demonstrations and meetings. The Court further observes that the domestic authorities merely listed events the applicants had attended, and some parts of speeches they had delivered in some of these events, without providing any reasons as to how those elements substantiated or reinforced the suspicion of them having committed the offence of being a member of an armed terrorist organisation. In numerous judgments, the Court found that similar speeches made by politicians fell within the scope of Article 10 of the Convention and could not be considered sufficient to convince an objective observer that a terrorism-related offence had been committed (see *Selahattin Demirtaş*, cited above, §§ 274-80; *Yüksekdağ Şenoğlu and Others v. Türkiye*, nos. 14332/17 and 12 others, §§ 541-45, 8 November 2022; *Yüksek v. Türkiye*, no. 4/18, §§ 112-15, 22 October 2024; and *Tuğluk*, cited above, §§ 110-15). Having reviewed the speeches at issue, the Court considers that there is no reason to depart from the conclusions in those judgments, as the applicants' speeches and their participation in public events were of a political nature and cannot be considered to have amounted to encouraging violent action.

35. Regarding the third element, which concerned the first applicant, the Court observes that in the initial detention order (see paragraph 4 and 6 above), the magistrate merely noted that the funerals had turned into propaganda events, that part of a municipal cemetery had been designated as a "PKK martyrs' graveyard", that a commemoration event had been organised within the municipal council building, and that municipal resources had been used for those purposes. The Court considers that some of those events might, in principle, raise a reasonable suspicion of the commission of

an offence under the relevant counter-terrorism legislation. However, the Court notes that the detention order merely enumerated those events and stated that they had taken place in Diyarbakır. The material before the Court does not disclose any evidence that the first applicant (who was the mayor at the time) had a personal involvement in the organisation of those events. In her statement to the Magistrate's Court, the first applicant denied her involvement in those events, explaining that municipalities were under a legal duty to provide burial services, that the choice of burial sites and grave markings was a matter for the families of the deceased, and that the municipality had no authority to prevent the display of flags or propaganda material by those attending the funerals in question. The detention order, however, did not identify any specific decision, instruction or omission attributable to the first applicant in person in connection with the events in question. It merely enumerated events that took place within the municipality during the applicant's tenure and treated her status as mayor as sufficient to attribute those events to her. However, the detention order did not establish any concrete factual connection between the applicant and the conduct in question beyond an inference drawn from the office she held. In particular, it did not allege that the applicant personally organised, authorised or directed the events concerned, nor did it identify any specific decision she took, any allocation of municipal resources she approved, or any omission attributable to her in circumstances where she had the authority and opportunity to intervene. Accordingly, the Court finds that the Magistrate's Court failed to sufficiently demonstrate a causal link between the first applicant and the alleged unlawful acts, or to establish her personal responsibility for them (see, mutatis mutandis, Selahattin Demirtaş v. Türkiye (no. 4), no. 13609/20, § 234-36, 8 July 2025). These elements cannot therefore be considered capable of convincing an objective observer that she had committed the offence of membership of an armed terrorist organisation.

36. As for the material found during police searches of the first applicant's residence and municipal buildings (fourth element, see paragraph 4 above), the Court notes that the detention order described those materials in conclusive terms, without setting out their actual content or explaining the basis for the characterisations the Magistrate's Court relied upon. In the Court's view, the mere existence of those materials appears to have sufficed for the court to characterise them as legitimising the PKK's ideology, promoting violence and portraying militants as "opposition forces", without setting out the passages, titles or extracts on which those characterisations were based. The basis for the court's conclusions is therefore not apparent. In the absence of other elements establishing the criminal nature and personal responsibility of the applicant of those facts and elements, the Court fails to see how the mere presence of such material could, in itself, justify the suspicion that the first applicant had committed the offence of membership of a terrorist organisation (see, *mutatis mutandis*, *Yüksek*, cited above, § 118,

Tuğluk, cited above, § 111 and, *mutatis mutandis*, *Müdür Duman v. Turkey*, no. 15450/03, § 33, 6 October 2015).

37. As regards Article 15 of the Convention and the notice of derogation given by Türkiye to the Secretary General of the Council of Europe following the attempted *coup d'état* in July 2016, the Court reiterates its findings in *Parıldak v. Türkiye* (no. 66375/17, § 88, 19 March 2024) and *Tuğluk* (cited above, § 116). In particular, it held that the measures complained of in those cases could not be regarded as having met the requirements of Article 15 of the Convention, since, ultimately, no derogating measure had been applicable to the applicants' situations.

38. For the reasons set out above, the Court considers that none of the impugned decisions on the applicants' initial and continued pre-trial detention cited evidence that indicated a clear link between their actions – mainly their political speeches and participation in events organised by the DTK – and the offence of membership of a terrorist organisation, on suspicion of which they were detained. The judicial authorities failed to demonstrate that the evidence available to them met the standard of reasonable suspicion, such as to satisfy an objective observer that the applicants could have committed the offence for which they were detained.

39. There has accordingly been a violation of Article 5 § 1 of the Convention.

2. Whether the decisions concerning the applicants' pre-trial detention were sufficiently reasoned (Article 5 § 3 of the Convention)

40. The Court refers to the general principles under Article 5 § 3 of the Convention concerning the justification of detention, as set out in *Buzadji v. the Republic of Moldova* ([GC], no. 23755/07, §§ 87-91, 5 July 2016) and *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 222-25, 28 November 2017).

41. In the present case the Court has already found that no specific facts or information capable of giving rise to a reasonable suspicion justifying the applicants' pre-trial detention were put forward by the national courts at any time during their detention.

42. The Court reiterates that the persistence of a reasonable suspicion that a detainee has committed an offence is a condition *sine qua non* for the validity of his or her continued detention (see *Merabishvili*, cited above, § 222, with further references). As regards Article 15 of the Convention and the notice of derogation given by Türkiye, the above considerations equally apply (see paragraph 37). The Court therefore considers that there has also been a violation of Article 5 § 3 of the Convention (compare also *Selahattin Demirtaş*, cited above, §§ 353-56, and *Tuğluk*, cited above, §§ 120-24).

VII. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

43. Relying on Article 5 § 4 of the Convention, the first applicant submitted that, owing to the restriction on her access to the investigation file, she had not been able to properly challenge the lawfulness of her deprivation of liberty.

44. The Court notes at the outset that the first applicant did not submit to the Court a copy of the decision by the competent authority restricting her and her lawyers' access to the case file. At no stage did she claim that such a decision had not been served on her, nor did she provide any explanation for failing to include a copy of it in her submissions.

45. As the applicant's failure to provide the Court with a copy of the decision in question prevents an assessment of whether the restriction was based on legitimate grounds (compare *Yüksekdağ Şenoğlu and Others*, cited above, § 577), the Court concludes that she has failed to substantiate her claims. Accordingly, this complaint must be declared inadmissible for being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention (compare also *Tuğluk*, cited above, §§ 125-30).

VIII. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicants further alleged a violation of their right to freedom of expression and to freedom of peaceful assembly as guaranteed by Articles 10 and 11 of the Convention on account of their pre-trial detention. They argued that they had been detained on account of their participation in several public events, as well as the statements they had made during political gatherings and demonstrations.

47. Being master of the characterisation to be given in law to the facts of the case, the Court will consider these complaints under Article 10 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Tuğluk*, cited above, §§ 131 - 34).

A. Admissibility

48. The Government invited the Court to declare the complaint under Article 10 inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, arguing that the applicants' acts fell within the scope of Article 17 of the Convention. In the alternative, the Government invited the Court to declare the complaint inadmissible as being manifestly ill-founded. The applicants contested these arguments.

49. The Court has already examined and dismissed identical preliminary objections by the Government in *Tuğluk* (cited above, §§ 135-40). Having reviewed the parties' submissions, the Court sees no reason to depart from its

findings in that case. 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

50. For the general principles under Article 10 of the Convention concerning the detention of politicians on the basis of the speeches they had given notably in political events, the Court refers to its judgment in *Tuğluk* (cited above, §§ 145-54, and the references cited therein).

51. In the present case, the Court considers that the applicants' initial and continued detention on account of their statements (see paragraph 34 above) amounted to an interference with the exercise of their freedom of expression.

52. In determining whether this interference was "prescribed by law", the Court notes that it has already found that the applicants' detention was not based on a reasonable suspicion that they had committed an offence, for the purposes of Article 5 § 1 (c), and that there has therefore been a violation of their right to liberty under Article 5 § 1 (see paragraph 39 above). The Court reiterates that no deprivation of liberty will be lawful unless it falls within one of the sub-paragraphs (a) to (f) of Article 5 § 1 and that a detention measure that is not lawful, as long as it constitutes an interference with one of the freedoms guaranteed by the Convention, such as Article 10, cannot, in principle, be regarded as a restriction of that freedom prescribed by law (compare *Sabuncu and Others v. Turkey*, no. 23199/17, § 230, 10 November 2020, and *Tuğluk*, cited above, § 151). It follows that the interference with the applicants' rights and freedoms under Article 10 § 1 of the Convention cannot be justified under Article 10 § 2 since it was not prescribed by law.

53. As regards the notice of derogation lodged by Türkiye, the Court refers to its findings set out above in paragraph 37 above. It considers that those conclusions apply in the context of its examination under Article 10 of the Convention as well.

54. Accordingly, there has been a violation of Article 10 of the Convention.

IX. ALLEGED VIOLATION OF ARTICLE 18 IN CONJUNCTION WITH ARTICLE 5 § 1 OF THE CONVENTION

55. The applicants maintained that their pre-trial detention had pursued a hidden purpose, namely the elimination of political opposition and the restriction of political debate.

56. Having regard to the material before it, the specific circumstances of the case and the conclusions reached above under Article 5 § 1 of the Convention, the Court does not consider it necessary to examine separately

the first applicant's complaint under Article 18 taken in conjunction with Article 5 (see, *mutatis mutandis*, *Atilla Taş v. Turkey*, no. 72/17, § 196, 19 January 2021; *Mehmet Hasan Altan v. Turkey*, no. 13237/17, § 216, 20 March 2018; and *Şahin Alpay v. Turkey*, no. 16538/17, § 186, 20 March 2018). It will, however, examine the second applicant's complaint under that provision.

A. Admissibility

57. The Government submitted that, since Article 18 has no independent existence and since, in their view, there had been no violation of Article 5 § 1, the second applicant's complaint was incompatible *ratione materiae* with the provisions of the Convention. The second applicant contested that argument.

58. Having found a violation of Article 5 § 1 of the Convention (see paragraph 39 above), the Court considers that the complaint under Article 18 of the Convention in conjunction with Article 5 § 1 is not incompatible *ratione materiae* with the provisions of the Convention. The Court therefore dismisses the Government's objections.

59. The Court notes that this 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

60. The general principles concerning the interpretation and application of Article 18 have been summarised in *Merabishvili* (cited above, §§ 287-317), and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 164-65, 15 November 2018).

61. The Court reiterates that in *Tuğluk* (cited above, §§ 167-75) it noted that, although the applicant was not a member of parliament at the time of her arrest, she was one of HDP's leading figures who played a prominent role in its political activities and decision-making processes. It further observed that Ms Tuğluk was arrested and placed in pre-trial detention at around the same time as numerous HDP members of parliament, mayors and other party members, and concluded that her detention was not an isolated example but formed part of a broader pattern. Having regard to those elements, the Court held that it had been established beyond reasonable doubt that the applicant's detention pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate and was thus in breach of Article 18 in conjunction with Article 5 § 1.

62. In the present case, having regard to its findings above in respect of the complaint under Article 5 § 1 of the Convention, namely that the second applicant's detention was not based on a reasonable suspicion that she had committed an offence, as well as her political role, holding senior positions

in several political parties (see paragraph 2 above), and the timing of her placement in pre-trial detention, which occurred at around the same time as the detention of numerous HDP members of parliament, mayors and other party members in late 2016, the Court considers that her detention forms part of the broader pattern described in the judgments of *Selahattin Demirtaş v. Turkey (no. 2)* (cited above, §§ 423-38), *Yüksekdağ Şenoğlu and Others* (cited above, §§ 638-40), and *Tuğluk*. Accordingly, the Court finds that the second applicant's deprivation of liberty pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which lies at the very core of the concept of a democratic society.

63. There has accordingly been a violation of Article 18 of the Convention taken in conjunction with Article 5 § 1 in respect of the second applicant.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. The applicants claimed 16,000 euros (EUR) each in respect of non-pecuniary damage. They also claimed EUR 3,500 jointly in respect of costs and expenses.

65. The Government argued that the applicants' claims in respect of non-pecuniary damage were unsubstantiated, excessive and did not correspond to the Court's case-law.

66. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 16,000 to each applicant in respect of non-pecuniary damage, plus any tax that may be chargeable. It also awards the sum of EUR 2,000 to the applicants jointly in respect of the costs and expenses in the domestic proceedings and before the Court, plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applicants' complaints under Article 5 §§ 1 and 3 and Article 10 of the Convention, as well as the second applicant's complaint under Article 18 taken in conjunction with Article 5 § 1 of the Convention admissible;

3. *Declares* the complaint concerning Article 5 § 4 of the Convention inadmissible;

4. *Holds* that there has been a violation of Article 5 §§ 1 and 3 of the Convention;

5. *Holds* that there has been a violation of Article 10 of the Convention;

6. *Holds* that there has been a violation of Article 18 in conjunction with Article 5 § 1 of the Convention in respect of the second applicant;

7. *Holds* that there is no need to examine separately the admissibility and merits of the first applicant's complaint under Article 18 taken in conjunction with Article 5 § 1 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 16,000 (sixteen thousand euros) to each applicant separately, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 9 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	82955/17	Kışanak v. Türkiye	12/09/2017	**Gültan KIŞANAK** 1961 Kocaeli Turkish	Benan MOLU
2.	82956/17	Tuncel v. Türkiye	12/09/2017	**Sebahat TUNCEL** 1975 Kocaeli Turkish	Benan MOLU