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

SECOND SECTION

CASE OF ÇAĞIL v. TÜRKİYE

(Application no. 19085/18)

JUDGMENT

Art 6 § 1 (criminal) • Access to court • Applicant's inability to appeal to the Court of Cassation against his conviction involving fines below the statutory threshold for appeal not impairing the very essence of his right of access to court

Prepared by the Registry. Does not bind the Court.

STRASBOURG

21 January 2025

FINAL

21/04/2025

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Çağıl v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Pauliine Koskelo,
Jovan Ilievski,
Davor Derenčinović,
Gediminas Sagatys,
Stéphane Pisani*, judges*,

and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 19085/18) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Ferat Çağıl (“the applicant”), on 17 April 2018;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning the right of access to a court and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 17 December 2024,

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

INTRODUCTION

1. The application concerns the alleged unfairness of criminal proceedings arising from the applicant’s inability to appeal to the Court of Cassation against his conviction by the Third Division of the Edremit Criminal Court of First Instance (“the trial court”). The applicant complains of a violation of his right to fair hearing under Article 6 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1985 and lives in Istanbul. He was represented by Mr E. Davut, a lawyer practising in Istanbul.

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

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

5. On 5 September 2015 the applicant and his girlfriend, G.R.F., quarrelled with two individuals, T.A. and V.E., at a cafe in Altınoluk, Balıkesir, and the quarrel turned into a fight.

6. On 16 December 2015 the Edremit public prosecutor filed an indictment against the applicant, G.R.F., T.A. and V.E., for making threats, insulting people in public and inflicting actual bodily harm.

7. On 26 May 2016 the trial court convicted the applicant, together with others, of making public insults and threats and inflicting actual bodily harm, and sentenced him to eighty-seven day-fines amounting to 1,740 Turkish liras (TRY) (approximately 594 euros (EUR) at the material time), twenty-five day-fines amounting to TRY 500 (approximately EUR 170 at the material time) and 120 day-fines amounting to TRY 2,000 (approximately EUR 683 at the material time) respectively. The judgment was final because the sentences were below the statutory threshold for appeals under provisional section 2 of Law no. 5320 on the implementation and application of the Code of Criminal Procedure.

8. On 21 July 2016 the applicant lodged an individual application with the Constitutional Court, claiming, among other things, that his inability to appeal against the judgment of the trial court violated his right of access to a court.

9. On 31 August 2016 the applicant paid the fine imposed on him for making threats (EUR 152 according to the exchange rate applicable at the material time) and on 15 December 2016 he paid the fines for making public insults and inflicting bodily harm (approximately EUR 473 and EUR 543 respectively according to the exchange rate applicable at the material time).

10. On 28 December 2017 the Constitutional Court found his application inadmissible as being manifestly ill-founded. As regards his complaint concerning the right of access to a court, the Constitutional Court's reasoning reads as follows:

> "14. The right of access to a court includes not only the right to bring proceedings at first instance but also the right to appeal to higher courts if such remedies, in the form of an objection or an appeal to a court of appeal and the Court of Cassation, have been provided for in the domestic law (*Ali Atlı*, application no. 2013/500, 20/03/2014, § 49).
>
> 15. The right of access to a court is, as a rule, not absolute and it may be subject to limitations. However, any limitations should not impair its very essence, should pursue a legitimate aim, should be precise and proportionate and should not place a heavy burden on the applicant (*Serkan Acar*, application no. 2013/1613, 2/10/2013, § 38).
>
> 16. The Constitution provides that the establishment, duties and powers, functions and trial procedures of the courts are to be regulated by law. Accordingly, the regulation of procedural rules has been left to the legislature's discretion provided that those regulations are not contrary to the Constitution. The Constitution contains no rule which provides for a right of appeal against all court decisions (*Tufan Şahin*, application no. 2012/799, 26/3/2013, § 19).
>
> 17. Although the right of appeal in criminal matters is guaranteed under the European Convention on Human Rights and the additional Protocols thereto, there is no detailed provision concerning this right in respect of civil proceedings. This right may also be subject to exceptions with regard to offences of a 'minor character'.

18. Given that, it cannot be said that it violates constitutional rights for there to be no appeal against certain types of court decisions or to reduce the number of cases by preventing unnecessary applications, and thus to resolve disputes within a reasonable time without unduly burdening the courts (*Abdurrahman Şanda*, application no. 2014/3907, 7/12/2016, § 32).

19. When the present case is examined in light of these principles, it is clear that the judgment of the Third Division of the Edremit Criminal Court of First Instance was final. Considering the nature and quantum of the matter in dispute, it has been concluded that this statutory limit is not at a level that would offend against the sense of justice, [and] that in this respect it is clear that there has been no violation of the applicant's right of access to a court because the judgment that was the basis of the present application could not be appealed against. ..."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CRIMINAL CODE (LAW NO. 5237, WHICH ENTERED INTO FORCE ON 1 JUNE 2005)

11. Article 86 of the Criminal Code read, in so far as relevant at the material time, as follows:

> "(1) Any person who intentionally causes another person physical pain or who impairs another person's health or ability to see or hear shall be sentenced to a penalty of imprisonment for a term of one to three years.
>
> (2) Where the effect of an intentional injury on a person is minor and can be cured by simple medical treatment then, on complaint by the victim, a penalty of imprisonment for a term of four months to one year or a judicial fine shall be imposed ..."

12. Article 106 of the Criminal Code read, in so far as relevant at the material time, as follows:

> "(1) A person who threatens another individual by stating that he will attack the life or physical or sexual integrity of that individual or his or her relative shall be liable to a term of imprisonment of six months to two years. Where the threat relates to causing extensive loss of economic assets or other related harm, on complaint by the victim a term of imprisonment of up to six months or a judicial fine shall be imposed ..."

13. Article 125 of the Criminal Code reads, in so far as relevant, as follows:

> "(1) A person who attributes an act, or fact, to another person in a manner that may impugn that person's honour, dignity or reputation, or attacks someone's honour, dignity or reputation by swearing shall be sentenced to a penalty of imprisonment for a term of three months to two years or a judicial fine. For a person to be held criminally liable for an insult made in the absence of the victim, the act must have been done in the presence of at least three other people ...
>
> ...
>
> (4) Where the insult is made in public, the penalty to be imposed shall be increased by one-sixth."

II. CODE OF CRIMINAL RECORDS (LAW NO. 5352, WHICH ENTERED INTO FORCE ON 1 JUNE 2005)

14. Article 4 of the Code of Criminal Records provides that judicial fines must be entered in the criminal registry. Under Article 9 of the same Code, criminal records must be removed from the criminal register and archived once the sentence has been executed. Under Article 12 of the same Code, an archive record concerning a judicial fine must be completely erased five years after the conditions for its archiving have been fulfilled.

III. PROVISIONS CONCERNING THE STATUTORY THRESHOLD FOR APPEAL AND THE RELEVANT PRACTICE OF THE DOMESTIC COURTS AS SUBMITTED BY THE GOVERNMENT

15. The relevant part of Article 305 of the former Code of Criminal Procedure (Law no. 1412), which was found unconstitutional by the Counstitutional Court on 23 July 2009, read as follows:

> "Judgments delivered by the criminal courts can be appealed against. However, a judgment relating to custodial sentences of 15 years or more shall be reviewed by the Court of Cassation without any fees or expenses.
>
> 1. Judgments relating to a sentence of a judicial fine up to and including two billion Turkish liras;
>
> ...
>
> cannot be appealed against ..."

16. Provisional section 2 of Law no. 5320 (adopted on 31 March 2011 by Law no. 6217) on the implementation and application of the Code of Criminal Procedure, which was in force at the material time, read as follows:

> "Until regional courts of appeal enter into service, judicial fines of up to TRY 3,000 cannot be appealed against, except for those commuted from sentences of imprisonment."

17. Article 272 of the Code of Criminal Procedure, which entered into force on 20 July 2016, reads, in so far as relevant, as follows:

> "(1) An appeal may be lodged against judgments rendered by a court of first instance.
>
> ...
>
> (3) However, the following judgments are not amenable to appeal:
>
> (a) Except for judicial fines commuted from imprisonment, no appeal may be lodged against sentences of a judicial fine up to and including TRY 3,000 ..."

18. On 23 July 2009 the Constitutional Court struck down sub-paragraph 1 of Article 305 § 2 of the former Code of Criminal Procedure. The relevant part of its decision reads as follows:

"... [T]he rule being challenged provides that no appeal lies against judgments imposing judicial fines up to and including two billion liras imposed by criminal courts. For the purposes of that rule, only the amount of the final judicial fine is relevant, regardless of whether it is a judicial fine imposed directly or a judicial fine converted from a short-term prison sentence. It is clear that the legislature's purpose in removing the right of appeal against certain of the decisions rendered by the criminal courts is based on the idea that the workload of the Court of Cassation would increase if all decisions were subject to review by the Court of Cassation and consequently proceedings would be slowed down. In other words, the legislature has restricted appeals against decisions on certain offences that may be considered insignificant. Since the right of appeal has been limited only in relation to offences punishable by the mere imposition of a fine, which can be considered to be 'minor offences' in the context of the criminal justice system, and is not at a level that would offend against the sense of justice when measured against current purchasing power, nor would it lead to consequences incompatible with the concept of the rule of law, the rule being challenged is not contrary to Articles 2, 36, 141 and 142 of the Constitution in terms of judicial fines imposed directly.

However, offences which are punishable by imprisonment and which underlie judicial fines [converted from imprisonment] imposed for those offences, are not of a 'minor' nature. In view of the statement in Article 2 of Additional Protocol No. 7 to the European Convention on Human Rights that the appropriateness of the term 'less serious offences' or 'minor offences', where it indicates an exception to the right to a two-level trial under Article 2 of Additional Protocol No. 7 to the European Convention on Human Rights, should be determined by considering whether the punishment of the offence requires imprisonment or not, it is clear that the regulation introduced by the rule being challenged is incompatible with the right to a fair trial where judicial fines converted from imprisonment are concerned.

Moreover, if decisions imposing judicial fines which represent the commutation of a sentence of imprisonment are related to offences that may indirectly result in deprivation of rights for a convicted person under our legislation, the inability of defendants to appeal against these decisions may lead to unfair consequences. For example, in respect of offences of theft, fraud, forgery or breach of trust, there is a possibility that judicial fines converted from imprisonment will be imposed because the property involved is of low value, because the defendant shows remorse or for other reasons allowing a reduction of the penalty, and may therefore fall below the limit for appeal. In such a case, a person sentenced to a judicial fine converted from imprisonment that is below the limit for appeal will not be able to become a civil servant, be elected as an MP or be a member of a political party. It is not possible to consider a conviction for an offence that may have such severe consequences for the person as insignificant or light, and when the legal benefit being protected and the discretionary power granted to the legislature are evaluated together, it is clear that the regulation in question is incompatible with principles of justice and equity.

For the reasons explained, since the rule being challenged relates to appeal rights on the basis of a monetary limit in respect only of the final judicial fine, and ignores the nature and consequences for the person of judicial fines converted from imprisonment, it is contrary to Articles 2 and 36 of the Constitution. The rule must be struck down ..."

IV. CASE-LAW OF THE COURT OF CASSATION ON CONVICTIONS NOT AMENABLE TO APPEAL AS SUBMITTED BY THE GOVERNMENT

19. The Government submitted four judgments of various chambers of the Court of Cassation in which the court had refused to entertain appeals by public prosecutors or defendants against convictions where the resulting fines were below the statutory threshold for appeal. The Government acknowledged that even in such cases the Court of Cassation could review a decision solely in respect of the legal characterisation of offences where the final sentence imposed on a defendant was below the statutory threshold for an appeal. In support of that argument, the Government submitted a judgment of the plenary Court of Cassation (dated 27 December 2005, E. 2005/7-121 K. 2005/171), of which the relevant part reads as follows:

> "... [h]owever, final judgments may be appealed against only in respect of the legal characterisation of the offence, provided that [the offence appealed against] provides for sanctions exceeding the statutory appeal threshold.
>
> In the present case, the intervening party's (*katılan*) lawyer did not challenge the legal characterisation of the offence, nor could the alleged act be characterised as a different offence ..."

20. Lastly, the Government submitted a judgment of the plenary Court of Cassation (dated 28 May 2020, E. 2018/3-191 K. 2020/242) in support of their contention that a defendant could have recourse to an extraordinary remedy under Article 309 of the Criminal Code, namely an appeal in the interests of justice, in order to have a final conviction reviewed by the Court of Cassation where the sentence is below the statutory threshold for appeal. The relevant parts of that judgment read as follows:

> "... [T]he lawmaker's [choice] not to provide a right of appeal in respect of final judgments is not based on the assumption that the judgments in question will always be accurate or they will not contain unlawfulness. The legal system has developed, by and within itself, a solution for any problem. Where it is not possible to remedy the unlawfulness contained in a judgment by means of ordinary legal remedies, unlawfulness may be remedied by means of an appeal in the interests of justice, which is regulated under Articles 309 and 310 of the Code of Criminal Procedure.
>
> As clearly emphasised in various judgments of the plenary criminal divisions of the Court of Cassation (such as the judgment dated 12 March 2013, E. 2012/1515 K. 2013/102, as well as the judgment dated 21 December 2010, E. 2010/10-230 K. 2010/264), final judgments of criminal courts of first instance may be the subject of appeal (i) only upon appeals lodged to the detriment of [defendants] and provided that (ii) the legislation providing for the offence [appealed against] provides for sanctions exceeding the statutory threshold [set for appeals], and (iii) where [the appeal] concerns the legal characterisation of the offence or a [conviction where] a sentence not exceeding the statutory threshold has been erroneously imposed where the offence has been correctly characterised ..."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

21. The applicant complained that he had had no opportunity to have the decision of the trial court reviewed by a higher tribunal, namely the Court of Cassation, on the sole gound that the judicial fines had not exceeded the statutory limit for appeal. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

22. The Government raised three preliminary objections, on the grounds of an abuse of the right of application, a lack of significant disadvantage and that the application was manifestly ill-founded.

1. Objection as to the alleged abuse of the right of application

(a) The parties' observations

23. The Government asserted that the applicant had abused his right of individual application firstly because he had knowingly misquoted the Constitutional Court's decision on its review of the constitutionality of Article 305 § 2 of the former Code of Criminal Procedure. His submissions had been formulated so as to give the impression that the Constitutional Court had considered the mere fact of prescribing a statutory threshold for appeal against judicial fines to be unconstitutional regardless of their nature. However, the Constitutional Court had in fact found Article 305 § 2 to be unconstitutional only in respect of judicial fines substituted for sentences of imprisonment and not in respect of cases where only a judicial fine could be imposed. Secondly, they asserted that the applicant's submission that the judicial fines imposed on him would form part of his criminal record for the rest of his life had also been misleading. Once the fines had been paid, they would be erased from the record and kept only in the archives, which would themselves be expunged after five years. Since the applicant had paid the judicial fines imposed on him on 31 August 2016 and 15 December 2016, the conditions for the deletion of the archive records of his conviction had been fulfilled at the time of the submission of their observations on admissibility and merits of the case.

(b) The Court's assessment

24. The Court reiterates that an application may be rejected as abusive only in extraordinary circumstances (see *Egić v. Croatia*, no. 32806/09, § 40,

5 June 2014). According to the Court's case-law, an application may be considered an abuse of the right of application if it is knowingly based on untrue facts with a view to deceiving the Court (see, among other authorities, *X and Others v. Bulgaria* [GC], no. 22457/16, § 145, 2 February 2021; see also *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006). The applicant's allegations concerning (i) the Constitutional Court's decision on Article 305 § 2 of the former Code of Criminal Procedure, and (ii) his criminal record do not relate to the facts but to the legal assessment of the merits of the case. That being so, the Court cannot conclude that the applicant based his allegations on information which he knew to be untrue (ibid., § 87).

25. The Court therefore dismisses the Government's preliminary objection.

2. *Objection as to the alleged lack of significant disadvantage*

(a) The parties' observations

26. The Government submitted that the applicant had not suffered a significant disadvantage as a result of his inability to appeal against his conviction. They asserted, in particular, that in the light of the Court's case-law an application should be found inadmissible for lack of significant disadvantage where an amount equal to or below EUR 500 was at stake. Having regard to the income level of the applicant as a lawyer, the amounts of the judicial fines, which in their submission had amounted to EUR 460, EUR 151 and EUR 541, had been of a minimal nature and the applicant had not submitted any argument or evidence to suggest that his financial circumstances had been such that the outcome of the case would have had a significant impact on his personal life. In any event, judicial fines would be expunged from the archive records after five years and the applicant had failed to substantiate his allegation that the judicial fine would cause problems for him in practising his profession.

27. The applicant argued that being a lawyer could not in itself be considered an indication of wealth, and that it would be unlawful to reject an application concerning his inability to have recourse to a remedy against a conviction for which the sentence had been a judicial fine merely because the fine was allegedly minor in quantum.

(b) The Court's assessment

28. General principles with regard to the "significant disadvantage" admissibility criterion may be found in *Sylka v. Poland* ((dec.) no. 19219/07, § 27, 3 June 2014).

29. The Court observes that the applicant was found guilty of three different criminal offences which were set out in the Criminal Code and he was ultimately sentenced to three separate judicial fines in different amounts in respect of each of those offences. In the Court's view, once an individual

has been convicted of multiple criminal offences defined in the criminal code of a given country which are punishable by penalties such as a term of imprisonment or a judicial fine, he or she does not, in principle, need to demonstrate the negative consequences of the conviction or argue that the amount of the fine(s) imposed constitutes a significant disadvantage in respect of his or her complaints under Article 6 of the Convention concerning the conviction.

30. In the Court's view, at least two weighty considerations speak in favour of this finding. Firstly, criminal convictions are registered on the individual's criminal record and remain there for a period of time which cannot be regarded as insignificant. Secondly, and more importantly, criminal convictions for offences set out in criminal codes generally entail a stigma which also cannot be regarded as insignificant. According to the Government, the applicant's criminal record would therefore have been deleted on 21 December 2021, that is more than five years after the sentence against him was executed. The question whether an individual has (or has not) suffered a significant disadvantage under Article 35 § 3 (b) of the Convention therefore cannot be reduced to the amount of the judicial fine imposed as a result of criminal convictions for such offences or excluded because the convictions will be expunged from the records subject to certain conditions (see *Lobzhanidze and Peradze v. Georgia*, nos. 21447/11 and 35839/11, § 61, 27 February 2020). Accordingly, the Court cannot uphold the Government's preliminary objection under the present head.

31. Even if the Court takes account solely of the amount of the judicial fines, it considers that, since they amount to a total of EUR 1,168, they are sufficient to remove the bar to admissibility under Article 35 § 3 (b) of the Convention. Since the Government merely stated that the fines could not have had a significant impact on the applicant because he was a lawyer, the Court considers that they have failed to establish that the fines were insignificant (compare *Rudyk and Others v. Ukraine* (dec.), nos. 52932/07 and 11 others, 9 April 2009, and see also *Sancaklı v. Turkey*, no. 1385/07, § 49, 15 May 2018). Last but not least, the Court considers that the present case concerns a question of interpretation of the Court's case-law on the right of access to a court. There was no access to a higher tribunal to appeal against a conviction for an offence for which the sentence was a judicial fine or custodial sentence, but the sentence imposed was a judicial fine below a certain amount.

32. Accordingly, the Court dismisses the Government's preliminary objection in this regard.

3. *Objection that the application was manifestly ill-founded*

(a) **The parties' observations**

33. The Government lastly asserted that the application should be declared inadmissible as being manifestly ill-founded on the grounds that

there had been no arbitrariness in the Constitutional Court's decision and that the Court should find no appearance of a violation given the minor nature of the sentence and the legitimate aims pursued.

34. The applicant maintained his arguments, stating that the Constitutional Court's decision had been arbitrary and had contradicted its own precedents.

(b) The Court's assessment

35. The Court notes that it has already examined similar objection raised by the Government in previous cases and rejected them (see, *Mehmet Çiftci v. Turkey*, no. 53208/19, § 26, 16 November 2021, *Demirtaş and Yüksekdağ Şenoğlu v. Türkiye*, nos. 10207/21 and 10209/21, §§ 77-78, 6 June 2023, *Kural v. Türkiye*, no. 84388/17, § 54, 19 March 2024, and *Namık Yüksel v. Türkiye*, no. 28791/10, § 35, 27 August 2024). It sees no reason to depart from those findings in the present case and therefore dismisses the Government's objection.

4. Overall conclusion on the admissibility of the application

36. The Court concludes that the application is not inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

37. The applicant complained of a violation of Article 6 of the Convention because he had had no remedy for the judgment of the trial court. In his view, an appeal against the trial court's judgment should have been available regardless of the amount of the judicial fines imposed on him, given the significant impact they had had on his life. The applicant further argued that his conviction could affect his relationships with his clients, and that in any event the deletion of his criminal record could not expunge the impact of the unlawful way he had been treated.

(b) The Government

38. The Government submitted that the limitation in question had been based on provisional section 2 of Law no. 5320, which was accessible and foreseeable as to its application. The limitation had pursued the legitimate aims of ensuring compliance with the "reasonable time" requirement under Article 6 § 1 of the Convention, ensuring the proper administration of justice and protecting the Court of Cassation's role as a senior court hearing reviews

on questions of law, by preventing appeals in cases concerning less serious offences from leading to an excessive caseload.

39. The Government asserted that the offences of which the applicant had been found guilty had been of a minor nature within the meaning of Article 2 § 2 of Protocol No. 7 to the Convention, and that the judicial fines imposed had been low. They further asserted in that connection that a judicial fine could be erased from all records after five years from its payment and would not cause a deprivation of rights under Article 53 of the Criminal Code, unlike a sentence of imprisonment, and that it had not prevented the applicant from practising as a lawyer. The applicant's criminal record would therefore have been deleted by 21 December 2021. They also observed that in the present case the judicial fines did not carry any risk of being converted to a sentence of imprisonment since the applicant had already paid them. In any event, even assuming that the applicant had failed to pay the fines, the public prosecutor responsible for the execution of sentences would have substituted them with community service, since the legislation did not give prosecutors any discretion on this point.

40. The Government further argued that the present case should be distinguished from *Bayar and Gürbüz v. Turkey* (no. 37569/06, 27 November 2012), where the offence at issue had been set out in section 6(2) and (4) of the Prevention of Terrorism Act as then in force, concerning freedom of expression, and had been aimed at protecting national security, whereas the present case concerned ordinary offences.

41. The Government acknowledged that one of the factors leading the Court to find a violation of Article 6 § 1 of the Convention in *Bayar and Gürbüz* (ibid.) was a right given to public prosecutors by the Court of Cassation through its case-law to appeal against convictions which were not otherwise amenable to appeal if the challenge was to the legal characterisation of the offence. However, the Government submitted that the right in question did not appear in legislation but rather derived from the Court of Cassation's case-law, which, in its current form, acknowledged that none of the parties could appeal against a conviction when the sentence imposed was below the statutory threshold set for appeals (see paragraph 19 above). The Government conceded that a conviction of that kind could be the subject of an appellate review in the Court of Cassation only when it concerned the legal characterisation of the offence (ibid.) but submitted that such an appeal did not always result in a finding against the defendant. In the Government's view, the exceptional right of the prosecution to appeal did not constitute an interference with the right to a fair trial, given that it was buttressed by safeguards for defendants and did not give rise to any deprivation of their rights. The Government argued that in any event the applicant might also be able to have the final judgment reviewed by the Court of Cassation through an "appeal in the interests of justice" (*kanun yararına bozma*), an extraordinary remedy available under Article 309 of the Code of

Criminal Procedure (see paragraph 20 above). Lastly, the Government expressed their disagreement with the Court's findings in paragraph 48 of the judgment in *Bayar and Gürbüz*, arguing that the fact that the public prosecutor had not exercised the disputed right should have meant that the principle of equality of arms had not been breached. The Government invited the Court to change its approach in the present case, where the facts on that particular point were indistinguishable.

2. *The Court's assessment*

(a) General principles

42. While there is no right under Article 6 of the Convention to a particular outcome of criminal proceedings or, therefore, to a formal conviction or acquittal following the laying of criminal charges (see *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X), there is indisputably a right to have one's case heard by a court within a reasonable time once the judicial process has been set in motion. That right is based on the need to ensure that accused persons do not have to remain too long in a state of uncertainty as to the outcome of the criminal accusations against them (see *Wemhoff v. Germany*, 27 June 1968, p. 26, § 18, Series A no. 7, and *Kart v. Turkey* [GC], no. 8917/05, § 68, ECHR 2009 (extracts)).

43. However, the right to a court, enshrined in Article 6 of the Convention, of which the right of access is one aspect (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18), is not absolute; it may be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal. However, these limitations must not restrict exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (see *Guérin v. France*, 29 July 1998, § 37, *Reports of Judgments and Decisions* 1998-V, and *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, § 133, 3 November 2022).

44. Furthermore, Article 6 of the Convention does not require the Contracting States to establish courts of appeal or cassation. However, if such courts exist in a judicial system, the guarantees of Article 6 must be secured, and, in particular, the State must ensure that individuals have an effective right of access to those courts against decisions of first-instance courts which have determined criminal charges against them. The manner in which Article 6 § 1 applies to proceedings before courts of appeal or of cassation, however, depends on the specific features of the proceedings concerned and account must be taken of the entirety of the proceedings and the court of cassation's role in them; the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (see *Zubac v. Croatia* [GC], no. 40160/12, § 82, 5 April 2018, albeit in the context of proceedings

concerning the civil limb of Article 6 § 1 of the Convention, and see *Andreyev v. Estonia*, no. 48132/07, § 68, 22 November 2011, with further references).

(b) Application of general principles to the present case

45. In the present case, the Court notes that the trial court convicted the applicant of insulting people, making threats and inflicting bodily harm and sentenced him to three separate judicial fines in the amounts of TRY 1,740, TRY 500 and TRY 2,000 (approximately EUR 594, EUR 170 and EUR 683 at the material time). Since each of the judicial fines was below the statutory threshold set for a right of appeal to obtain under the domestic law, no appeal lay against the convictions.

46. At this point, the Court reiterates that Article 6 of the Convention does not provide for a right to have a criminal conviction or sentence reviewed by a higher tribunal, which is a right protected by Article 2 of Protocol No. 7, to which Türkiye was not a party at the time of the events giving rise to the present application. At the time, the Turkish criminal justice system provided for a two-tier court system, where, subject to certain conditions, an appeal might lie against a conviction by a first-instance court to the Court of Cassation, which functioned as an appeal court of second and last instance. Moreover, while the domestic legal provisions provided that convictions for which fines below TRY 3,000 were imposed directly could not be appealed against by the parties to a criminal case, the Court of Cassation's case-law had conferred on public prosecutors alone a judge-made right to appeal against such convictions where, *inter alia*, the appeal was to the detriment of the defendant. It is on this basis that the Court is called upon to assess whether there has been a breach of the applicant's right of access to a court under Article 6 § 1 of the Convention. Its assessment will primarily be guided by the general principles of its own case-law, as set out above.

(i) Whether there was a legal basis for restricting the applicant's right of access to a court

47. The Court observes that even though the trial court indicated that the fines imposed on the applicant were final under the terms of Article 272 of the Code of Criminal Procedure, that provision was not in force at the material time. As the Government correctly pointed out, the fines imposed on the applicant were final by virtue of provisional section 2 of Law no. 5320, under which no right of appeal lay against judicial fines of up to TRY 3,000 unless they had been substituted for a sentence of imprisonment. Accordingly, the Court is prepared to assume that there was a legal basis for the restriction on the applicant's right of access to a court.

(ii) Whether the restriction pursued a legitimate aim

48. The Court further considers that, as the Government also submitted, the restriction in question pursued the legitimate aims of avoiding burdening the caseload of the Court of Cassation with cases of lesser importance (see *Bayar and Gürbüz*, cited above, § 43) and enabling the court to carry out its main duty, namely the consistent application of the law throughout the country. The Court will therefore examine whether the restriction on the applicant's right of access to a court was proportionate to the legitimate aim pursued.

(iii) Whether the restriction was proportionate

49. In *Bayar and Gürbüz* (cited above, §§ 41-49), the Court examined a statutory provision, namely Article 305 § 2 of the former Code of Criminal Procedure, which was similar to the one at issue in the present case. The provision considered in *Bayar and Gürbüz* excluded from appellate review all judicial fines up to and including two billion Turkish liras, which the Court in that case found had impaired the applicants' right of access to a court under Article 6 § 1 of the Convention, for the following reasons. Firstly, the Court found that the offence at issue in that case, namely the printing or publishing statements or leaflets of terrorist organisations, was not only of a serious nature but also punishable by a judicial fine (and later with a term of imprisonment) and concluded that it certainly could not be regarded as a minor offence. In that connection, the Court also relied on the Constitutional Court's decision dated 23 July 2009, which had declared Article 305 § 2 of the former Criminal Code unconstitutional (see paragraph 18 above). Secondly, the Court also took into account the relevant case-law of the Court of Cassation which granted public prosecutors the right to appeal – a right not granted by the law – in order to challenge the legal characterisation of an offence by a court of first instance, even in cases where the fine imposed as a result of conviction fell within the scope of Article 305 § 2 of the former Criminal Code and the decision was therefore final. The Court concluded this placed the defence and the public prosecutor on different footing as regards their access to the Court of Cassation. Accordingly, the Court will focus on the proportionality of the restriction of the applicant's right of access to the Court of Cassation:

(i) the nature of the offence;

(ii) the nature and degree of severity of the penalty; and

(iii) the judge-made procedural right for public prosecutors to lodge an appeal to the detriment of the defendant whereby only the legal characterisation of the offence could be challenged.

(α) Nature of the offence

50. The Court notes that problems concerning the right of access to a court in the context of appeals may arise in cases where statutory provisions exclude the right to lodge an appeal on the basis of, among others, the nature of the offence and/or the nature and degree of severity of the penalty imposed by a first or lower-instance court (see *Bayar and Gürbüz*, cited above, §§ 41-49). This aspect of the right of access to a court under Article 6 § 1 of the Convention overlaps to a certain extent with the right enshrined in Article 2 of Protocol No. 7 to the Convention, namely the right to have a conviction reviewed by a higher tribunal unless the exceptions provided for in its second paragraph apply. One such exception, which is relevant to the present case, is offences of a minor character. However, Türkiye signed and ratified Protocol No. 7 to the Convention on 14 March 1985 and 2 May 2016, respectively, with the result that it entered into force for Türkiye on 1 August 2016, that is to say, after the applicant's conviction on 26 May 2016. Moreover, the applicant's complaint under that provision was declared inadmissible under Rule 54 § 3 of the Rules of Court at the time when the Government were notified of the present application.

51. The Court reiterates that Protocol No. 7 adds to the guarantees contained in the Convention: it does not detract from them. For present purposes, this means that Article 2 of Protocol No. 7 cannot be construed so as to limit the scope of Article 6 guarantees in appellate proceedings with respect to those Contracting Parties for which Protocol No. 7 is not in force (see *Lalmahomed v. the Netherlands*, no. 26036/08, § 38, 22 February 2011). The Court will take into account, in so far as relevant, the nature of the offences of which the applicant was convicted.

52. In this connection, the Court observes that the applicant was convicted of insulting people, making threats and of inflicting bodily harm, which were ordinary offences under the Criminal Code. The offence at issue in *Bayar and Gürbüz*, cited above, was the printing or publishing of statements or leaflets on behalf of terrorist organisations, which was laid down in the Prevention of Terrorism Act and was markedly different in terms of its nature. This difference can also be seen in the fact that the applicants' conviction in *Bayar and Gürbüz* (cited above) gave rise to a separate breach of Article 10 of the Convention, an element which is missing in the present case.

(β) Nature and degree of severity of the penalty

53. The Court observes that all the offences of which the applicant was convicted were punishable by either a term of imprisonment or a judicial fine. Moreover, and unlike in *Bayar and Gürbüz* (cited above), the legal basis for the restriction placed on the applicant's right of access to a court was provisional section 2 of Law no. 5320, which had been enacted following the Constitutional Court's decision dated 23 July 2009 declaring Article 305 § 2

of the former Criminal Code unconstitutional. In that connection, the Court stresses that the Constitutional Court ruling applied only where a trial court had sentenced an individual to a short term of imprisonment, that is, to a term not exceeding one year, and then commuted it to a judicial fine. In other words, the provision was found to have been compliant with the Constitution in cases where a judicial fine had been directly imposed rather than being substituted for a short term of imprisonment. This is the case, for example, where an offence is punishable solely by a judicial fine and a defendant is so sentenced, or where an offence is punishable either by a term of imprisonment or a judicial fine and the domestic courts choose to impose a judicial fine, as in the present case. This position also now applies under Article 272 of the Code of Criminal Procedure, which replaced provisional section 2 of Law no. 5320 as of 20 July 2016 (see paragraph 17).

54. The Court further observes that while all the offences of which the applicant was convicted potentially carried a custodial sentence or a judicial fine, it was undisputed that, had the applicant been sentenced to a term of imprisonment for any of those offences, an appeal would have lain against his conviction. The same is also true where judicial fines have been substituted for a short term of imprisonment. Accordingly, the domestic legal provisions would have given the applicant a right to appeal to the Court of Cassation had he been sentenced to a term of imprisonment for the offences of which he was found convicted. Since, however, the trial court imposed judicial fines directly, rather than a term of imprisonment, they were not amenable to appeal because none of the fines exceeded TRY 3,000 individually.

55. Furthermore, there does not seem to be any realistic prospect of the directly imposed judicial fines being converted into imprisonment in the event of non-payment, as demonstrated by the Government's arguments on this point which were not challenged by the applicant. The Government submitted that in fact if an individual were to default on the payment of such a fine, the authorities would have no discretion to convert the fine to a term of imprisonment but would automatically substitute community work for the fine, and only in the event that the individual failed to carry out that work would the fine be converted into imprisonment. In the Court's view, imprisonment for failure to pay a fine appears to be a remote consequence of a directly applied judicial fine, and in any event it did not happen in the present case because the applicant had paid the fines imposed on him (see *Kindlhofer v. Austria*, no. 20962/15, §§ 42-43, 26 January 2022).

56. In view of the above, the Court holds that the nature and degree of severity of the penalty imposed on the applicant, as well as the specificities of Turkish law on matters concerning appeals, provide for a balanced approach. It is possible to appeal in respect of certain offences depending on the penalty imposed (compare *Gurepka v. Ukraine (no. 2)*, no. 38789/04, § 33, 8 July 2010, where the applicant was unable to appeal against his

conviction, for which he had been fined, although the offence was punishable either by a fine of six to twelve times the monthly minimum wage or by administrative detention for up to fifteen days: the Court held that this violated his right under Article 2 of Protocol No. 7).

(γ) Procedural means available to the parties

57. Finally, the Court will decide whether this balance was upset by the procedural right created by the Court of Cassation which gave public prosecutors alone the right to appeal against a conviction where, as in the applicant's case, the sentence was a judicial fine below the statutory threshold for an appeal. Since this element formed part of the Court's finding of a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention in *Bayar and Gürbüz*, cited above, a question was put to the parties when notice of the present application was given with a reference to that case. However, while the Government made extensive submissions on this point, the applicant did not specifically complain or make any submissions, let alone detailed ones, on this point.

58. In this connection, the Government acknowledged that public prosecutors enjoyed a judge-made right to appeal against judicial fines below the statutory threshold for appeals where the appeal was to the detriment of the defendant and challenged the legal characterisation of the offence(s) underpinning the conviction. Nevertheless, the Government argued that such an appeal would not necessarily lead to a result that was prejudicial to the defendant. Furthermore, a defendant such as the applicant could always have the conviction reviewed by the Court of Cassation by way of "an appeal in the interests of justice", an extraordinary remedy provided for in Articles 309 and 310 of the Code of Criminal Procedure which enabled the Ministry of Justice and the public prosecutor at the Court of Cassation to apply to the Court of Cassation for the quashing of a final judgment, if it had not been reviewed by a regional court of appeal or the Court of Cassation. In any event, the Government took the view that the present case did not raise a problem of equality of arms, since the public prosecutor had not appealed against the applicant's convictions.

59. That notwithstanding, the Court cannot but note that the Government did not put forward any argument as to why the legitimate aim underlying the restriction on the applicant's right of access to a court, namely to avoid overloading the Court of Cassation with cases of minor importance, had required on the one hand giving no right of appeal to a defendant – such as the applicant – while on the other giving public prosecutors and/or intervening parties a right in cases where their appeals were to the detriment of a defendant and concerned with, *inter alia*, the erroneous legal characterisation of the offences of which the defendant had been convicted. In that connection, the Court further notes that both public prosecutors and defendants who have been involved in a criminal trial may request the

Ministry of Justice or the public prosecutor at the Court of Cassation to exercise their discretion to have a matter reviewed by the Court of Cassation in the interests of justice in accordance with Articles 309 and 310 of the Code of Criminal Procedure. The Court is therefore unable to discern, and the Government did not put forward any arguments in this regard, how granting public prosecutors alone an additional judge-made right of appeal to the detriment of the defendants could achieve the legitimate aim identified above.

60. Be that as it may, the fact remains that the public prosecutor did not exercise that right. Furthermore, the Government presented numerous arguments to show that the applicant had access to procedural safeguards aimed at preventing any disadvantage vis-à-vis the public prosecutor as a result of the judge-made right to appeal. In such circumstances, it was for the applicant to explain either how the public prosecutor's judge-made right to appeal disproportionately violated his right of access to a court, or why the procedural safeguards relied on by the Government were insufficient to remedy the interference with his right. However, he did not make any submissions in response to the Government's arguments.

(δ) Conclusion

61. Accordingly, the Court finds that the applicant's inability to lodge an appeal with the Court of Cassation against his convictions involving fines below the statutory threshold for appeal was not such as to impair the very essence of his right of access to a court. It follows that there has been no violation of Article 6 § 1 of the Convention on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 21 January 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President