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

SECOND SECTION

DECISION

Application no. 44493/19
Ali ERCAN
against Türkiye

The European Court of Human Rights (Second Section), sitting on 9 September 2025 as a Committee composed of:

Tim Eicke*, President*,
Jovan Ilievski,
Oddný Mjöll Arnardóttir*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 44493/19) 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") on 6 August 2019 by a Turkish national, Mr Ali Ercan ("the applicant"), who was born in 1984, lives in Şanlıurfa and was represented by Ms L.B. Gökkan Baran, a lawyer practising in Şanlıurfa;

the decision to give notice of the complaint concerning freedom of expression under Article 10 of the Convention 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, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the conviction of the applicant for disseminating propaganda in favour of a terrorist organisation.

2. On 13 July 2017 the applicant was indicted for disseminating propaganda in favour of a terrorist organisation, namely the PKK/KCK (Workers' Party of Kurdistan/Kurdistan Communities Union) under section 7

§ 2 of the Prevention of Terrorism Act (Law no. 3713), through various Facebook posts allegedly published by him.

3. On 23 February 2018 the Şanlıurfa 6th Assize Court found the applicant guilty as charged and sentenced him to three years, three months and eleven days' imprisonment.

4. On 18 May 2018 the Gaziantep Regional Court of Appeal (the "Regional Court") dismissed the applicant's appeal. The decision of the Regional Court was final at the time it was rendered.

5. On 20 July 2018 the applicant lodged an individual application with the Turkish Constitutional Court. He relied, in particular, on Article 10 of the Convention. By a decision of 21 June 2019, the Constitutional Court dismissed his application as being manifestly ill-founded.

6. On 6 August 2019 the applicant lodged the present application with the Court. He relied notably on Article 10 of the Convention.

7. Following the entry into force of Law no. 7188 on 24 October 2019 (see paragraph 13 below for further details) the Regional Court's decision became amenable to appeal before the Court of Cassation.

8. By a petition of 24 October 2019, the applicant appealed against the Regional Court's decision and requested a stay of execution of his sentence. On the same day, the Şanlıurfa 6th Assize Court stayed the execution of the applicant's sentence and imposed a preventive measure prohibiting him from leaving the country.

9. According to the latest information provided by the parties (17 March 2023), the applicant's appeal against his conviction was still pending before the Court of Cassation.

THE COURT'S ASSESSMENT

10. The Government invited the Court to declare the application inadmissible, arguing that the applicant's conviction was not final but still pending on appeal before the Court of Cassation. They further contended that the individual application remedy before the Constitutional Court would be available for the applicant following the delivery of the decision of the Court of Cassation. Referring to the previous case-law of the Court (in particular, *Uzun v. Turkey* (dec.) no. 10755/13, 30 April 2013), they also pointed out that the Court had previously declared a great number of cases inadmissible for non-exhaustion of newly introduced domestic remedies.

11. The applicant disagreed with the Government's objections. He asserted that the aim of Law no. 7188 was to prevent cases being transferred to the Court and to provide an opportunity for redress at the domestic level. He further indicated that he had already served most of his sentence, his complaints had already been declared inadmissible by the Constitutional Court and an individual application had already been made to the Court. He

therefore submitted that the appeal procedure could not be considered effective, as far as the present case was concerned.

12. The Court reiterates that an applicant's compliance with the requirement to exhaust domestic remedies is normally assessed with reference to the date on which the application was lodged with the Court. However, this rule is subject to exceptions, which may be justified by the particular circumstances of each case, notably following the creation of new remedies enacted to redress at the domestic level the Convention grievances of persons whose applications pending before the Court concerned similar issues (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 87, ECHR 2010).

13. As regards the facts of the present case, the Court observes that the applicant's criminal conviction had been considered final under domestic law, and his individual application was dismissed by the Constitutional Court. before the present application was lodged on 6 August 2019. Subsequently, on 24 October 2019, Law no. 7188 ("the Law") introduced a right to appeal before the Court of Cassation against decisions of the regional courts of appeal concerning a number of offences linked to freedom of expression, including disseminating propaganda in favour of a terrorist organisation. The Law also provided for the possibility to appeal against decisions which had become final before its entry into force (see for further details on this law *Öztırak v. Türkiye* (dec.), no. 46472/19, §§ 14-20, 26 March 2024). The Court notes that the applicant availed himself of the new remedy and that the proceedings initiated by him were still pending before the Court of Cassation at the time the applicant and the Government submitted their additional observations on 21 February 2023 and 17 March 2023, respectively. The Court further notes that neither party has informed it of the outcome of those proceedings since that time. In respect of the applicant's arguments concerning the effectiveness of the newly introduced remedy, and notably the fact that the Constitutional Court had already rejected his individual application as manifestly ill-founded, the Court points out that similar objections have already been dismissed in another case against Türkiye with similar facts (see *Öztırak v. Türkiye* (dec.), no. 46472/19, §§ 40-54, 26 March 2024) and sees no reason to depart from those findings in the present case.

14. The Court further points out that in the case of *Öztırak* (cited above), it declared the application inadmissible on the grounds that the applicant had failed to exhaust the remedy made available by Law no. 7188. In doing so, the Court considered in particular that the mentioned remedy was capable of providing redress and offering reasonable prospects of success, and that the applicant would be able to make a fresh application to the Constitutional Court and to this Court upon exhaustion of the mentioned remedy, if he still considered himself to be the victim of the alleged violation (ibid., §§ 40-55). Having regard also to the context in which the cassation remedy was introduced, the Court found legitimate grounds for making an exception to

the general principle that the assessment of whether domestic remedies have been exhausted must be carried out with reference to the date on which the application was lodged. Accordingly, the applicant was required by Article 35 § 1 of the Convention to exhaust the domestic remedies that became available to him following the entry into force of Law no. 7188. The Court finds no facts or arguments that would lead it to depart from this approach in the present case.

15. In view of the foregoing, the Court allows the Government's objection and concludes that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 October 2025.

Dorothee von Arnim Deputy Registrar	Tim Eicke President