

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

SECOND SECTION

DECISION

Application no. 46472/19
Ömer ÖZTIRAK
against Türkiye

The European Court of Human Rights (Second Section), sitting on 26 March 2024 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Egidijus Kūris,
Pauliine Koskelo,
Saadet Yüksel,
Frédéric Krenc,
Diana Sârcu,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 August 2019,

Having regard to the decision of 14 November 2020 to give notice to the Turkish Government ("the Government") of the complaints under Article 6 §§ 1 and 3 (c) and Article 10 of the Convention, and to declare the remainder of the application inadmissible,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns an alleged breach of the applicant's right to freedom of expression on account of his conviction for disseminating propaganda in favour of a terrorist organisation. It further concerns the fairness of the criminal proceedings against him, given the trial court's use of statements he had made to the police in the absence of a lawyer. The applicant complains of a violation of Article 6 § 3 (d) and Article 10 of the Convention.

THE FACTS

2. The applicant, Mr Ömer Öztırak, is a Turkish national, who was born in 1993 and lives in Van. He was represented before the Court by Mr M. Kaçan, a lawyer practising in Van.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, 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 10 October 2016 the applicant was indicted for disseminating propaganda in favour of a terrorist organisation, namely the PKK/KCK (Workers' Party of Kurdistan/Kurdistan Communities Union), through various Facebook posts allegedly published by him.

6. On 19 October 2017, after several rounds of proceedings, the Van Assize Court ("the Assize Court") convicted the applicant as charged and sentenced him to one year, twenty-one months and twenty-two days' imprisonment under section 7(2) of the Prevention of Terrorism Act (Law no. 3713).

7. On 13 March 2018 the Erzurum Regional Court of Appeal ("the Regional Court") dismissed an appeal lodged by the applicant against the judgment of 19 October 2017. At the material time, the Regional Court's decision was final, as it was not amenable to appeal before the Court of Cassation.

8. On 18 May 2018 the applicant lodged an individual application with the Constitutional Court. He alleged, among other things, that his criminal conviction had breached his right to freedom of expression. He also complained that his right to a fair trial had been breached, arguing that the Assize Court had relied exclusively on the statements he had made to the police in the absence of a lawyer as regards the ownership of the Facebook page in question.

9. On 28 June 2018 the applicant began serving his sentence. The Government submitted that on 5 August 2019 the applicant had been released from prison on probation. Without explicitly disputing that claim, the applicant submitted that he had been "released" when the execution of his sentence had been stayed (see paragraph 12 below).

10. On 12 March 2019 the Constitutional Court dismissed the applicant's individual application as manifestly ill-founded. It considered, having regard to the proceedings as a whole, that there had clearly been no violation of the right to a fair trial. As regards the right to freedom of expression, the Constitutional Court found that the applicant had failed to comply with his obligation to submit evidence and to provide explanations in support of his allegation and had thus failed to substantiate it.

11. Following the entry into force of Law no. 7188 (see paragraph 14 below), the Regional Court's decision of 13 March 2018 (see paragraph 7

above) became amenable to appeal before the Court of Cassation. On 25 October 2019 the applicant appealed against the Regional Court's decision and requested a stay of execution of his sentence.

12. On 28 October 2019 the Assize Court stayed the execution of the applicant's sentence and imposed a preventive measure prohibiting him from leaving the country. An objection by the applicant against the travel ban was dismissed on 9 December 2019.

13. At the date of the latest information submitted by the parties (17 March 2023), the applicant's appeal against his conviction was pending before the Court of Cassation.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Relevant domestic provisions

14. On 24 October 2019 Law no. 7188 amending, *inter alia*, certain provisions of the Code of Criminal Procedure (Law no. 5271, hereafter "the CCP"), was published in the Official Gazette. Section 29 of Law no. 7188, amending Article 286 of the CCP, provided for a right to appeal to the Court of Cassation against decisions of the regional courts of appeal concerning, *inter alia*, a number of offences linked to freedom of expression, such as disseminating propaganda in favour of a terrorist organisation. For convictions which had already become final, the Law provided for the possibility of an appeal to the Court of Cassation within fifteen days of its entry into force.

15. The relevant part of section 7(2) of Law no. 3713, as in force until 24 October 2019, is set out in *Ete v. Türkiye* (no. 28154/20, § 11, 6 September 2022). Law no. 7188 introduced the following amendment to that provision:

> "The expression of an opinion not exceeding the [acceptable] limits of reporting or made for the purpose of criticism does not constitute an offence."

16. The relevant parts of the explanatory memorandum on draft Law no. 7188[1] read as follows:

> "In this context and focusing particularly on the offences directly linked to freedom of expression, the aim is to prevent differing practices and thus to achieve uniform practice throughout the country, by making available the remedy of cassation appeal [in relation to] certain decisions against which no appeal lies. At the same time, it is specifically emphasised that the expression of an opinion which does not exceed the [acceptable] limits of reporting or is made for the purpose of criticism does not constitute an offence ...

[1] The explanatory memorandum on draft Law no. 7188 is available at https://cdn.tbmm.gov.tr/KKBSPublicFile/D27/Y3/T2/DosyaKomisyonRaporunuVerdi/b980c094-deb9-4ef3-8424-1de264a95f4e.pdf (last consulted on 15 February 2024).

Section 29

... By making available the remedy of cassation appeal against decisions related to the offences in question against which no other appeal lies, the aim is to prevent differing practices and thus to achieve uniform practice throughout the country. When determining the offences [for which] the cassation appeal [is proposed to be] made available, the focus has been on offences directly linked to freedom of expression. The provision is intended to prevent violations of rights."

17. Article 141 of the CCP, entitled "Compensation [for damage sustained] as a result of preventive measures", sets out, *inter alia*, the circumstances in which a person detained in the context of criminal proceedings against him or her may claim compensation from the State (see *Aydoğan and Others v. Turkey*, nos. 30441/08 and 6 others, § 6, 8 February 2011).

B. Domestic case-law submitted by the parties

18. The applicant referred to (i) two decisions of the Court of Cassation (E.2021/11911 - K.2022/6034, and E.2021/11913 - K.2022/7935) where cassation appeals lodged by defendants after the entry into force of Law no. 7188 were dismissed, and (ii) two inadmissibility decisions of the Constitutional Court concerning those same defendants, which were handed down prior to the subsequent dismissal of their cassation appeals. The Court of Cassation's decisions made no mention of the Constitutional Court's inadmissibility decisions.

19. The Government referred to the case of *Ruken Gündüz* (no. 2018/24786, 13 September 2022), in which the Constitutional Court had found a violation of the right to a fair trial. The applicant in that case had appealed before a regional court of appeal against two distinct criminal convictions imposed within a single set of proceedings. The regional court had dismissed the appeal, resulting in one conviction becoming final, while the other had remained subject to appeal before the Court of Cassation. According to the documents submitted by the Government, the applicant had, in 2017, lodged an individual application with the Constitutional Court concerning the first conviction, but this had been summarily dismissed in 2018.

Subsequently, in August 2018, the applicant in that case had lodged another individual application after her second criminal conviction had become final. Following the entry into force of Law no. 7188, her first conviction had also become amenable to appeal before the Court of Cassation. In January 2021, after the Court of Cassation had dismissed the appeal against her first conviction, the applicant in question lodged a fresh individual application concerning the first conviction.

The Constitutional Court, having joined both of the individual applications lodged in 2018 and 2021, found a global violation of the right to a fair trial

on account of the lack of reasoning in the domestic courts' decisions. While the Constitutional Court did not refer in its judgment to the applicant's prior individual application, lodged in 2017 with regard to her first conviction, and its own previous inadmissibility decision, it did not dismiss the individual application of 2021, which concerned the same conviction, despite that inadmissibility decision.

20. The Government also referred to two decisions of the Constitutional Court, handed down in 2021 and 2022, which concerned two individual applications lodged before the entry into force of Law no. 7188. The Constitutional Court dismissed the applications for non-exhaustion of domestic remedies on the grounds that the applicants had or could have lodged a cassation appeal against their criminal convictions under that Law.

COMPLAINTS

21. Relying on Article 6 § 3 (d) of the Convention, the applicant complained that the trial court had relied exclusively on the statements he had made to the police, in the absence of a lawyer, as regards the ownership of the Facebook page in question, although he had later retracted those statements. He also complained under Article 10 of the Convention that his criminal conviction for disseminating propaganda in favour of a terrorist organisation had breached his right to freedom of expression. He argued in that connection that the Facebook page in question had not belonged to him and that, in any event, the disputed posts had not constituted propaganda in favour of a terrorist organisation.

THE LAW

22. The applicant complained that the trial court's use of statements he had made to the police in the absence of a lawyer had breached Article 6 § 3 (d) of the Convention.

23. The Court, being master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint should be examined under Article 6 §§ 1 and 3 (c) of the Convention (see *Simeonovi v. Bulgaria* [GC], no. 21980/04, § 92, 12 May 2017, and *Akdağ v. Turkey*, no. 75460/10, § 30, 17 September 2019), which, in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ..."

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

24. The applicant also complained that his criminal conviction for disseminating propaganda in favour of a terrorist organisation had breached Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions as to the admissibility of the application

1. The Government

25. The Government submitted that the application ought to be rejected for non-exhaustion of domestic remedies, pointing out that the applicant's criminal conviction was no longer final and that the proceedings concerning his case were pending before the Court of Cassation. They pointed out that the cassation appeal, while an ordinary domestic remedy, had not previously been available to the applicant. Referring to *Uzun v. Turkey* ((dec.), no. 10755/13, 30 April 2013), they further contended that the Court had previously declared numerous applications inadmissible for non-exhaustion of newly introduced domestic remedies.

26. The Government argued that the fact that part of the applicant's sentence had already been executed had no impact on the review to be conducted by the Court of Cassation. According to the Government, classifying the cassation appeal as ineffective on account of the partial execution of the sentence in question would be formalistic and contrary to the purpose of Law no. 7188. The Constitutional Court's prior inadmissibility decision also had no impact on the effectiveness of the cassation appeal, since the scope of the Constitutional Court's review was entirely distinct from that of the Court of Cassation.

27. According to the Government, the effectiveness of the cassation appeal, and the prospects of success offered by it, did not vary between those convictions for which this remedy had been available before the entry into force of Law no. 7188 and those for which it had become available afterwards. In that regard, the Government provided copies of three Court of Cassation decisions wherein the respective defendants' previously final

criminal convictions had been quashed after the entry into force of Law no. 7188. Furthermore, the Constitutional Court had also held that the remedy in question was a remedy to be exhausted (see paragraph 20 above).

28. The Government also argued that the Constitutional Court had dismissed the applicant's complaint concerning his right to freedom of expression on account of his failure to substantiate the alleged violation (see paragraph 10 above). In that connection, they maintained that since the Court of Cassation would deliver a fresh decision in the applicant's case, the applicant would then have the opportunity to lodge a new individual application with the Constitutional Court. The latter court's examination would cover the applicant's allegations in relation to the entirety of the criminal proceedings against him, including those before the Court of Cassation, independently from the issues raised in his prior individual application. The Government argued that there was no obstacle to the Constitutional Court rendering a decision in favour of the applicant, regardless of its prior decision. They referred in that connection to the case of *Ruken Gündüz* (see paragraph 19 above).

29. The Government contended that, were the applicant to be acquitted, various avenues would be available to him in order to seek reparation for the damage suffered on account of the deprivation of liberty resulting from the previous final conviction. They referred, in particular, to Article 141 of the CCP (see paragraph 17 above) and added that the Constitutional Court might also award compensation to the applicant if a violation were found.

30. Lastly, the Government raised several other preliminary objections on the following grounds: abuse of the right of application, manifestly ill-founded nature of the complaint under Article 6, non-exhaustion of domestic remedies and incompatibility *ratione materiae*.

2. The applicant

31. The applicant disagreed with the Government's objections.

32. As regards the objection concerning the remedies made available by Law no. 7188, the applicant maintained that the domestic remedies to be exhausted had to be available at the time at which an application is lodged with the Court. He emphasised that when he had lodged the present application, his conviction had become final and the Constitutional Court had already dismissed his individual application.

33. The applicant asserted that the appeal lodged by him after the entry into force of Law no. 7188 had no impact on the execution of his sentence or on his conviction. He also pointed out that when he submitted his observations to the Court, the appeal had been pending before the Court of Cassation for almost two years.

34. According to the applicant, Law no. 7188 aimed at preventing possible findings of violations by the Court and hindering individuals from accessing effective remedies, by deliberately prolonging legal proceedings.

The applicant further argued that the cassation appeal at issue could not be considered effective, given that the Constitutional Court had declared his prior individual application inadmissible as manifestly ill-founded and that he had already served part of his sentence. He submitted that in many cases, appeals lodged after the entry into force of Law no. 7188 had been dismissed by the Court of Cassation following previous inadmissibility decisions of the Constitutional Court. In that regard, the applicant provided copies of the decisions mentioned in paragraph 18 above.

35. The applicant further argued that no effective domestic legal mechanisms were available to compensate him for the criminal proceedings brought against him, the measures taken within the scope of the trial and the part of his sentence served before the introduction of the new remedy. In particular, he maintained that Article 141 of the CCP did not offer an effective remedy in the present case. According to the applicant, while he could theoretically apply to the Constitutional Court again, it was unlikely that he would obtain adequate and sufficient compensation. Furthermore, there was no precedent from the Constitutional Court concerning such a possibility.

B. The Court's assessment

1. General principles

36. The Court refers to the general principles concerning the rule of exhaustion of domestic remedies and the subsidiary character of its role (see *Cocchiarella v. Italy* [GC], no. 64886/01, §§ 38-40, ECHR 2006-V; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, §§ 69-70, ECHR 2010; *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; and *Uzun*, cited above, §§ 36-39).

37. It reiterates, in particular, that the assessment of whether domestic remedies have been exhausted is normally carried out 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 (see, among other authorities, *Demopoulos and Others*, cited above, § 87, and *Ancient Baltic religious association "Romuva" v. Lithuania*, no. 48329/19, § 94, 8 June 2021).

38. Furthermore, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Solonskiy and Petrova v. Russia* (dec.), nos. 3752/08 and 22723/09, § 33, 17 March 2020, with further references). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not

obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; *Aleksić v. Serbia* (dec.), no. 40825/15, § 62, 8 November 2022; and *Rutar and Rutar Marketing d.o.o. v. Slovenia*, no. 21164/20, § 37, 15 December 2022).

39. The Court also reiterates that the Convention system, which is founded on the principle of subsidiarity, cannot function properly without domestic proceedings being conducted within a reasonable time (see *Van den Kerkhof v. Belgium*, no. 13630/19, § 98, 5 September 2023).

2. Application of those principles to the present case

40. The Court observes that before the present application was lodged the applicant's criminal conviction had been considered final under domestic law, and his individual application was dismissed by the Constitutional Court. However, following the entry into force of Law no. 7188, the remedy of lodging an appeal with the Court of Cassation became available to the applicant and he availed himself of that opportunity (see paragraphs 11 and 14 above). Furthermore, at the date of the latest information available to the Court, the applicant's criminal conviction was no longer final under domestic law and his appeal was pending before the Court of Cassation (see paragraph 13 above).

41. The Court must therefore assess whether the applicant is required to exhaust the remedies that were made available to him after he lodged the present application, taking into account their accessibility and effectiveness (see *Demopoulos and Others*, cited above, §§ 87-88). In that regard, the Court stresses that the nature of the remedy and the context in which it was introduced weigh heavily in the Court's assessment of exceptions compelling the applicants to avail themselves of a new remedy that became available after the introduction of an application (see *Fakhretdinov and Others v. Russia* (dec.), nos. 26716/09 and 2 others, § 30, 23 September 2010).

42. In the circumstances of the present case, there is nothing to call into question the accessibility of the cassation remedy at issue, as the applicant has already availed himself of it. Furthermore, it is not in dispute between the parties that the applicant would be entitled to lodge a fresh individual application with the Constitutional Court after the conclusion of the criminal proceedings against him (see paragraphs 28 and 35 above).

43. As to the effectiveness of the remedies at issue, the Court notes that where available, an appeal to the Court of Cassation is an ordinary remedy under Turkish law that must be in principle exhausted before lodging an application with the Court (see, among other authorities, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008; *Akkaya v. Turkey* (dec.), no. 32015/09, 27 March 2012; and *İnan v. Turkey* (dec.), no. 14129/11, 11 December 2012). The same is true for the remedy of individual application to the Constitutional Court (see *Uzun*, cited above, §§ 68-70).

44. The present case does not therefore concern the effectiveness of those remedies *per se*. The main question is rather whether the remedies at issue are capable of providing redress and offering reasonable prospects of success in respect of the applicant's complaints, having regard to the particular circumstances of the present case.

45. In that connection, it appears from the Court of Cassation's decisions referenced by the Government, wherein previously final criminal convictions were quashed after the entry into force of Law no. 7188 (see paragraph 27 above), that the cassation remedy at issue offers reasonable prospects of success in respect of the applicant's appeal. The Court further notes that the applicant's complaint under Article 6 of the Convention concerns the trial court's use of the statements he made to the police, wherein he had initially admitted ownership of the Facebook page in question (see paragraph 21 above). Similarly, in the context of his complaint under Article 10, the applicant asserted that he had not published the posts leading to his conviction (ibid.). The latter complaint is therefore intertwined with the applicant's complaint under Article 6. In that regard, the Court notes that in the context of the applicant's appeal, the Court of Cassation may examine the trial court's use of the statements he made to the police, a matter which is closely related to the issue of ownership of the disputed page. Accordingly, and bearing in mind that the admissibility of evidence is a matter for regulation by national law and the national courts (see *Al Alo v. Slovakia*, no. 32084/19, § 42, 10 February 2022, with further references), the Court emphasises that the appeal at issue and the review to be conducted by the Court of Cassation are of particular relevance for both of the complaints raised by the applicant in the present case. In that connection, the Court finds it important to refer to the general principles regarding the right of access to a lawyer and the relationship of that right to the overall fairness of the proceedings under the criminal limb of Article 6 of the Convention (see, among other authorities, *Simeonovi*, cited above, §§ 110-20, and *Beuze v. Belgium* [GC], no. 71409/10, §§ 119-50, 9 November 2018).

46. The Court takes note of the applicant's argument that the cassation appeal cannot be deemed effective in the present case on account of the previous inadmissibility decision by the Constitutional Court. It observes, however, that the scope of the Court of Cassation's examination of the applicant's appeal within the criminal proceedings against him is entirely distinct from an examination made by the Constitutional Court in the context of an individual application (see *Uzun*, cited above, §§ 52 and 63). As regards the domestic decisions referenced by the applicant in that connection (see paragraphs 18 and 34 above), the Court observes that the Court of Cassation did not, in dismissing the appeals lodged by the defendants in those cases, refer to the fact that their prior individual applications had been dismissed by the Constitutional Court.

47. As to the applicant's argument that he had served part of his sentence, the Court considers that there is nothing to suggest that this fact is relevant for the examination of the applicant's appeal by the Court of Cassation. In the present case, the applicant's deprivation of liberty, resulting from the execution of his sentence, is inherently linked to his initial criminal conviction, which may be quashed by the Court of Cassation (compare and contrast *Yüksekdağ Şenoğlu and Others v. Türkiye*, nos. 14332/17 and 12 others, §§ 490-493, 504 and 506, 8 November 2022, where the Court dismissed the Government's preliminary objection related to the pending criminal proceedings against the applicants, who mainly complained that the bringing of criminal charges against them, and their pre-trial detention, had in themselves breached Article 10 of the Convention).

48. The fact that the applicant has served part of his sentence is, however, relevant for the assessment of whether he would be able to obtain adequate redress, notably in some form of tangible compensation, following an acquittal (see, *mutatis mutandis*, *Kerimoğlu v. Türkiye*, no. 58829/10, §§ 46-47 and 51, 6 December 2022). In that connection, the Court does not need to speculate about the potential applicability of Article 141 of the CCP in the applicant's case, because in any event, the Constitutional Court can provide such redress if it finds a violation in a possible individual application that may be lodged by the applicant.

49. Moreover, if the applicant's criminal conviction is upheld at the end of the trial, the Constitutional Court's approach in *Ruken Gündüz* and the Government's submissions in that regard (see paragraphs 19 and 28 above) suggest that the Constitutional Court's prior inadmissibility decision would not prevent a fresh examination of the applicant's allegations by that court. The Court also notes that in the context of the applicant's first individual application, the Constitutional Court considered that the applicant had failed to submit evidence and explanations in support of his complaint in respect of the right to freedom of expression and that he had failed to substantiate his complaint (see paragraph 10 above). Consequently, the Constitutional Court did not examine the merits of the applicant's complaint under Article 10 of the Convention. In that context, and regardless of whether the applicant had provided sufficient elements for an examination on the merits in his first individual application, the Court notes that any subsequent review by the Constitutional Court on the merits of a similar complaint that might be raised by the applicant within the context of a possible new individual application would essentially constitute a fresh examination. Furthermore, it appears that the Constitutional Court may also conduct a fresh examination regarding the complaint under Article 6, as it was done in *Ruken Gündüz* (see paragraph 19 above).

50. As regards the context in which the cassation remedy was introduced, the Court notes that section 29 of Law no. 7188 provides an additional avenue for lodging an appeal against various offences linked to freedom of

expression, such as the offence in issue in the present case (see paragraph 14 above). Furthermore, as stated in the relevant explanatory memorandum, the purpose of this provision was to prevent violations of defendants' rights and achieve a uniform approach in relation to the offences in question (see paragraph 16 above). Moreover, it is worth noting that the same Law also amended section 7(2) of Law no. 3713 – the provision under which the applicant was convicted – with a view to clarifying that the expression of an opinion made for the purpose of criticism does not constitute an offence (see paragraph 15 above).

51. At this juncture, the Court draws attention to its fundamentally subsidiary role. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 160, 27 November 2023). Accordingly, the Court finds that the purposes of the amendments in question, as stated in the relevant explanatory memorandum, are in line with the principle of subsidiarity.

52. The Court does not lose sight of the fact that as of the latest information available to it, the applicant's appeal has been pending before the Court of Cassation since October 2019 (see paragraph 13 above). The Court is also aware that a remedy which is effective in principle may lose its effectiveness in practice for the purposes of Article 35 § 1 as a result of the undue prolongation of the proceedings (see *Elçi v. Turkey* (dec.), no. 63129/15, § 55, 29 January 2019, and the reference therein). In the present case, although the length of the proceedings before the Court of Cassation is admittedly long, it is not in itself sufficient to draw a conclusion as to the effectiveness of the remedy in question (see, *mutatis mutandis*, *Wikimedia Foundation, Inc. v. Turkey* (dec.), no. 25479/19, § 46, 1 March 2022). Having regard to the considerations set out above, and noting also that the execution of the applicant's initial sentence was stayed (see paragraph 12 above), the Court does not consider that the length of the proceedings before the Court of Cassation has rendered the cassation remedy ineffective in the present circumstances, at least not for the time being (see, *mutatis mutandis*, *Elçi*, cited above, § 55).

53. The Court also notes that should the applicant still consider himself to be the victim of the alleged violations after duly exhausting the domestic remedies that became available to him following the entry into force of Law no. 7188, it would be open to him to lodge a new application with the Court, pursuant to Article 34 of the Convention.

54. In view of the foregoing, the Court finds 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 is

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. Lastly, the Court finds no exceptional circumstances capable of exempting the applicant from the obligation to exhaust domestic remedies.

55. The Court points out, however, that this conclusion in no way prejudices any subsequent review of the question of the effectiveness of the remedy introduced by Law no. 7188, both in theory and in practice, in the light of the decisions to be given by the domestic courts (see, *mutatis mutandis*, *Köksal v. Turkey* (dec.), no. 70478/16, § 29, 6 June 2017).

56. It follows that the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

57. That conclusion dispenses the Court from having to address any of the other grounds of inadmissibility put forth by the Government.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 25 April 2024.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President