



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

FOURTH SECTION

CASE OF ALI v. THE UNITED KINGDOM

(Application no. 40385/06)

JUDGMENT

STRASBOURG

11 January 2011

FINAL

11/04/2011

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

In the case of Ali v. the United Kingdom,

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

Ljiljana Mijović, *President*,

Nicolas Bratza,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Ledi Bianku,

Mihai Poalelungi, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 7 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 40385/06) against the United Kingdom of Great Britain and Northern Ireland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a British national, Mr Abdul Hakim Ali (“the applicant”), on 12 September 2006.

2. The applicant was represented by Ms J. Thomas of the Children's Legal Centre, a lawyer practising in Colchester. The United Kingdom Government (“the Government”) were represented by their Agent, Ms J. Gladstone of the Foreign and Commonwealth Office.

3. On 25 November 2008 the Acting President of the Fourth Section decided to communicate the complaint concerning Article 2 of Protocol No. 1 to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government requested an oral hearing. However, the Chamber decided not to hold a hearing in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1987 and lives in Milton Keynes.

6. The applicant attended The Lord Grey, a maintained secondary (foundation) school (“the school”) (see paragraph 23 below). On 8 March 2001 a fire was discovered in a waste paper basket in a classroom. The fire

brigade took the view that the fire had been started deliberately and the police were informed. The applicant and two other pupils were identified as being in the vicinity of the classroom at the time the fire was started. The Deputy Head advised the three boys that they should not return to the school until the police investigation was completed. Contrary to the statutory procedure for school exclusions set out in sections 64 – 68 of the School Standards and Framework Act 1998 (“the 1998 Act”) and the Department for Education and Skills Circular 10/99 (“the DfES circular”), no time limit was placed on the applicant's exclusion (see paragraphs 22 – 24 below).

7. On 21 March 2001 the Head Teacher wrote to the applicant's parents to tell them that he remained excluded from school until 5 April 2001. She offered to provide extra work for the applicant and stated that if his parents so wished, they could write to the Chairman of Governors to discuss the matter with them. This letter did not comply with the 1998 Act and the DfES circular as it failed to advise the applicant's parents that they had a right of appeal to the Governors of the School. Moreover, the Governors also failed in their duty to hold a hearing to confirm the exclusion or reinstate the applicant as required under the 1998 Act.

8. On 25 April 2001 the Deputy Head Teacher wrote to the applicant's parents to exclude him further until 15 May 2001. The letter was drafted in similar terms to that of 21 March 2001, and for the same reasons it failed to comply with the statutory requirements in the 1998 Act and the DfES circular.

9. During the period of exclusion, the school had been sending the applicant revision-based, self-assessing work in mathematics, English and science. This continued until 14 May 2001, the date of the applicant's final Standard Assessment Tests (“SATs”). He was permitted to attend school from 8 to 14 May 2001 in order to sit these examinations.

10. On 8 May 2001 the Personnel and Resourcing Committee of the Governing Body of the school met and were informed that the three pupils suspected of involvement in the fire had been excluded. Contrary to the requirements of the 1998 Act, the Governing Body did not convene a Governor's Disciplinary Committee or consider either the exclusion of the applicant or whether he should be reinstated.

11. The applicant was charged with the offence of arson against the school and he entered a not-guilty plea. On 25 May 2001 the Deputy Head Teacher wrote again to the applicant's parents. She indicated that as some of the witnesses in the case were students at the school, the applicant and the other two boys could not be permitted to return until the proceedings were concluded. She further indicated that she was making a referral to the access panel for alternative provision for the applicant's education. Finally, she advised the applicant's parents that he was being excluded for a further twenty days from 14 May 2001 and that the school would continue to set work as appropriate. The applicant's parents were asked to contact the

school to arrange to collect the work. They did not contact the school and no work was set after 14 May 2001.

12. On 25 May 2001 a form referring the applicant to the Local Education Authority ("LEA") for the provision of alternative education was finalised, although it was not received by the LEA until 8 June 2001.

13. Under the 1998 Act there was a standard 45-day maximum period for fixed term exclusions. That 45-day period expired on 6 June 2001.

14. On 18 June 2001 the Crown Prosecution Service notified the applicant's solicitors that the prosecution had been discontinued on the ground that there was insufficient evidence for there to be a realistic prospect of conviction. The following day the applicant attended court and the proceedings were formally ended. He then went to the school to meet with the Head Teacher, who advised him that she would act to arrange his re-entry as soon as she received written confirmation of the cessation of criminal proceedings. She received a fax to this effect from the court on 22 June 2001 and official notification from the police on 3 July 2001. On 3 July 2001 she wrote to the applicant's parents, inviting them to attend a meeting on 13 July 2001 to facilitate his re-integration. The invitation was extended again on 4 July 2001.

15. The LEA's access panel met on 19 June 2001, unaware that proceedings against the applicant had been discontinued. The panel recommended that the applicant should be provided with tuition by the Pupil Referral Unit ("PRU") until a decision was taken on his future at the school. The PRU offers part-time education to children who are out of school, generally because they have been excluded, but it is not required to provide the full national curriculum. On 27 June 2001 the LEA's Flexible Learning Co-ordinator wrote to the applicant's parents to inform them that the PRU would provide tuition until term ended on 20 July 2001 while the school resolved the exclusion issue. The school alleged, and the domestic courts subsequently accepted, that the Flexible Learning Co-ordinator had again contacted the applicant's parents in early July 2001 and they had declined the offer of tuition. The applicant's parents, however, deny that any offer was made at the beginning of July.

16. The applicant's parents did not attend the meeting with the Head Teacher on 13 July 2001. The reason for non-attendance was heavily contested but the judge at first instance concluded that they had chosen to stay away. One of the other two boys did attend and was admitted back to the school. However, as a consequence of their non-attendance, the Head Teacher wrote to the applicant's parents to advise them that she was removing the applicant from the school roll. The school governors and the LEA were also copied in. The applicant's name remained on the roll until the middle of October 2001 although he was not provided with any education by the school during this period.

17. In September 2001 the applicant was due to begin the first term of the first year of his GCSE studies. He did not return to the school. At the end of September 2001, the LEA's welfare service completed a notification of absence. On 5 October 2001 the LEA wrote to the Head Teacher, stating that the applicant was in Bangladesh and that a place at the school was not required for him. The judge at first instance accepted that this was wrong: the applicant had not been in Bangladesh and had been at home all along. Neither the school nor the LEA contacted the applicant again before removing his name from the roll, and the applicant and his parents were not subsequently informed of the removal.

18. In mid-October 2001 the applicant's family met with the Flexible Learning Co-ordinator. At this stage they were unsure about whether they wished the applicant to return to the school. They were advised to decide quickly, and to arrange interviews either at the school or at other schools so that he could resume his education on a full-time basis. From about the third week in October, the applicant's parents made it clear that he wished to return to the school. On 6 November 2001 the applicant's father wrote to the Head Teacher formally to request his re-instatement. On 14 November 2001 the Deputy Head Teacher replied, advising that the applicant's name had been removed from the roll, that his place had been allocated to a student on the waiting list and that the school was now oversubscribed in his year group. The applicant's father was advised to contact the LEA to find another school place. On 20 January 2002 the applicant was admitted to a new school, the Leon School.

19. The applicant issued a free-standing human rights claim against the school in the County Court, claiming, *inter alia*, that his right to education had been violated contrary to Article 2 of Protocol No. 1 to the Convention. The LEA was not a party to the proceedings. The case was transferred to the High Court. In rejecting the application, the judge held that the school was not the cause of the respondent's lack of suitable education between 13 July and the end of the summer term on 20 July because his family had declined the LEA's offer of tuition. The cause of the respondent's lack of schooling or education during the autumn of 2001 was more complex to ascertain but it was the LEA's responsibility to provide suitable education and there were educational facilities available to him. Thus although the decisions to exclude the respondent and to remove him from the roll were unlawful in domestic law, and could have been challenged by judicial review, they did not give rise to a liability in damages for breach of his rights under Article 2.

20. On appeal, the Court of Appeal found that the provision of self-assessing work during the first 45 days of exclusion amounted to sufficient access to education to answer the applicant's Convention claim. However, the Court of Appeal held that the respondent's right to education was denied between 7 June and 13 July, notwithstanding that the school was still

offering to provide him with substitute work to do at home, a matter held to be relevant only to damages. In relation to the last phase of the respondent's exclusion, from 14 July 2001 – 20 January 2002, the Court of Appeal regarded removal of the respondent's name from the school roll as improper, although giving rise to no separate legal consequences. But the respondent's exclusion during this period was, as the judge held, unlawful and unreasonable. In para 64 of the judgment the Court of Appeal concluded:

“So characterised, the exclusion of [the respondent] from 14 July until he was finally placed in a new school amounts, in my judgment, to a further denial of his Convention right to education. It was complete and it was prolonged. It was not terminated by the deletion of [the respondent's] name from the school roll because there was no lawful ground for deletion. To the extent that it may nevertheless have been acquiesced in, the damage may be mitigated. But this is not our present concern, and it will require (if the case goes that far) a factual inquiry into a number of things including the family's state of knowledge and understanding.”

21. In paragraph 68, the Court of Appeal rejected the school's further and fundamental argument that:

“... the bare existence of the education authority's fallback duty, together with [the respondent's] right to seek to enforce it, relieves the school either of its obligations or of the legal consequences of failing to discharge them. On the contrary, it is on the two public authorities who are the present respondents (or put more realistically, the school) that the state has chosen to devolve the material elements of the obligation which it has undertaken to provide universal secondary education. It is the head teacher and the governing body who in law bear the primary duty to educate a child who has been accepted in their school and, as a corollary, not to exclude him except as authorised by law.”

22. The school was granted leave to appeal to the House of Lords. In the course of the proceedings, the applicant did not contest the lower courts' rejection of his complaint that the period of exclusion between 9 March 2001 and 6 June 2001 had violated his rights under Article 2 of Protocol No. 1. In relation to the period of exclusion after 6 June 2001, the House of Lords unanimously held, albeit for different reasons, that there had been no violation of Article 2 of Protocol No. 1. The majority accepted that the applicant's exclusion from school was at times unlawful, but held that there would be a denial of the Convention right only if there were a systemic failure of the education system which resulted in the applicant's not having access to a minimum level of education. As regards the scope of Article 2 of Protocol No. 1, Lord Hoffman stated that:

“This does not however guarantee access to any particular educational institution the domestic system does provide: see *Simpson v United Kingdom* (1989) 64 DR 188. Nor is there a right to remain in any particular institution. Everyone is no doubt entitled to be educated to a minimum standard (*R (Holub) v Secretary of State for the Home Department* [2001] 1 WLR 1359, 1367) but the right under article 2 extends no further.”

23. The House of Lords found that in this case there was no systemic failure of the education system: the applicant's parents failed to collect work from the school; the offer of tuition from the PRU was declined; the applicant's parents failed to attend the meeting at the school on 13 July 2001; and finally, during the autumn the LEA's attempts to secure the applicant's re-admission to school were thwarted by his parents' uncertainty. Baroness Hale of Richmond, however, was concerned that the applicant had been let down badly by the school, although she also allowed the appeal because, in view of the judge's findings, it would not have been just to require the school to pay damages when the applicant's parents had refused various offers of tuition. Nevertheless she indicated that this was the paradigm of a case in which it would be just and appropriate to grant the applicant a declaration that the school had acted in a way that was incompatible with his rights under Article 2 of Protocol No.1.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Section 10 of the Education Act 1996 ("the 1996 Act") places on the Secretary of State for the Home Department the general duty of promoting education for the people of England and Wales. This obligation has been largely discharged by LEAs. Pursuant to sections 13 – 18 of the 1996 Act, the LEA has a general responsibility for education and is required to secure that efficient primary and secondary education are available to meet the needs of the population of their area. Section 19(1) of the 1996 Act further provides that each LEA shall make arrangements for the provision of suitable education at school for those children of compulsory school age who, by reason of exclusion, may not otherwise receive suitable education. Moreover, the DfES circular further provides that the LEA should ensure that temporarily excluded pupils are reintegrated where possible and educated meanwhile.

25. Foundation schools were established under section 20 of the School Standards and Framework Act 1998 ("the 1998 Act"). They have wider self-governing functions than other maintained schools. Pursuant to section 15 of the 1998 Act, LEAs can only intervene in the management of a Foundation school if there has been a serious breakdown in the way the school is managed or governed, or the safety of the pupils or staff is threatened. General responsibility for the conduct of the school lies with the governing body (section 38 of the 1998 Act), while the Head Teacher is responsible for the internal organisation, management and control of the school (section 61 of the 1998 Act and Regulation 5(1) of the Education (School Government) (Terms of Reference) (England) Regulations 2000).

26. The legislative provisions concerning school exclusions are contained in sections 64 – 68 of the 1998 Act and the DfES circular.

Pursuant to these sections, a Head Teacher of a maintained school may exclude a pupil for a fixed period or permanently, but the pupil may not be excluded for one or more fixed periods which amount to more than 45 days in one school year. Exclusions should be for the shortest time necessary, and should not be used for, *inter alia*, punishing pupils for the behaviour of parents. Where a pupil is excluded, the Head Teacher must take reasonable steps to inform relevant persons (in this case, the parents) of the period of exclusion, the reasons for the exclusion, and that he or she may make representations to the governing body. If a pupil is excluded for more than 5 days in any one term, the Head Teacher must inform the LEA and the governing body. The governing body must then consider the circumstances in which the pupil was excluded, any representations made by a relevant person, and, where practical, whether the pupil should be reinstated. The LEA must make arrangements for enabling the relevant person to appeal against any decision of the governing body not to reinstate a pupil who has been permanently excluded.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL NO. 1 TO THE CONVENTION

27. The applicant complained that his exclusion from school violated his right to education, as provided in Article 2 of Protocol No. 1 to the Convention, which reads as follows:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

28. The Government contested that argument.

A. Admissibility

29. The Government submitted that the applicant had failed to exhaust domestic remedies. Had he taken up the offer of alternative education at the PRU and considered it to be insufficient to meet his entitlement under Article 2 of Protocol No. 1 to the Convention, he could have brought judicial review proceedings against the Local Education Authority relying on Article 2 of Protocol No. 1 together with the Human Rights Act 1998. Similarly, if the LEA had failed in its obligation to provide section 19 education at all, judicial review proceedings could have been brought. In

fact, no such proceedings were brought and at no time did the applicant seek to join the LEA to the domestic court proceedings.

30. The Government therefore argued that the application should be declared inadmissible.

31. The applicant, on the other hand, submitted that the judgment of the House of Lords showed that he had exhausted the remedies open to him in domestic law. Had he taken up the offer of education at the PRU and brought judicial review proceedings, the relevant question for the court would have been whether the education provided at the PRU was “suitable”. The applicant's case throughout had been that it was not suitable because it did not cover the whole national curriculum, and this was the exact point litigated before the High Court, the Court of Appeal and the House of Lords.

32. The Court reiterates that the purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see, *inter alia*, *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, §§ 604 and 605, 13 November 2003).

33. The Court observes that in the proceedings before the House of Lords, the applicant did not contest the lower courts' rejection of his complaint that the period of exclusion between 9 March 2001 and 6 June 2001 violated his rights under Article 2 of Protocol No. 1. Consequently, in relation to this period of exclusion, the Court finds that the applicant has not exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention.

34. The applicant's complaints concerning the period of exclusion which began on 6 June 2001 and ended on 20 January 2002 were raised in the proceedings before the House of Lords. The Government, however, have submitted that the applicant should have taken up the offer of education at the PRU and then applied for permission to judicially review, on human rights grounds, the adequacy of the alternative education provided. Instead, the applicant brought a free-standing human rights claim against the school, in the course of which he submitted that the alternative education was inadequate. In substance, therefore, this issue was fully litigated before the

domestic courts, which held that the alternative education was adequate and that there had been no violation of the applicant's Convention rights.

35. The Court therefore rejects the Government's submission and finds that in relation to the complaints concerning the period of exclusion between 6 June 2001 and 20 January 2002, the applicant has exhausted domestic remedies for the purposes of Article 35 § 1 of the Convention.

B. Merits

1. The parties' submissions

(a) The applicant

36. The applicant submitted that the House of Lords had interpreted Article 2 of Protocol No.1 too narrowly in holding that there would only be a violation where there was a “systemic failure of the education system”. Instead, he contended that a failure by a public authority to deliver to an individual the education which it was his right to receive under the domestic law was also capable of violating Article 2 of Protocol No. 1. This would be the case whether there was a total failure to deliver education, as happened to the applicant between 8 May 2001 and 20 January 2002, or a partial failure where only a wholly inadequate education was available, as was the case for the applicant between 8 March 2001 and 8 May 2001.

37. The applicant submitted that the Court's jurisprudence indicated that the right to education consisted of three separate rights: a right of access to existing educational establishments; a right to an “effective” education; and a right of official recognition of studies successfully completed (*Case “relating to certain aspects of the laws on the use of languages in education in Belgium”*, judgment of 23 July 1968, Series A no. 6). In the *Belgian Linguistics Case* the Court observed that the aim of Article 2 of Protocol No. 1 was to guarantee to individuals the right to avail themselves of the means of instruction provided by the State at a given time. Consequently, the content of the right to education secured by Article 2 of Protocol No. 1 was not fixed by the Article itself; instead, it was prescribed by the provisions of the domestic law of education in each of the Contracting States, subject to the qualification that the domestic law in question must not itself injure the substance of the Convention right.

38. The applicant submitted that in the United Kingdom, the national curriculum formed the “means of instruction” which was the substance of how the right to education was delivered in England at the relevant time (*Belgian Linguistics case*, cited above, p. 18, § 3). In the United Kingdom, schools had a duty under sections 351(4) and 352 of the Education Act 1996 to provide education in accordance with the national curriculum to those

whose names were on their rolls, while parents had a duty to ensure that their children of compulsory school age attended the schools at which they were registered. A school at which a child was registered could only refuse the child entry in very limited circumstances, which included where the child had been excluded on disciplinary grounds under section 64 of the 1998 Act. Under section 64 of the 1998 Act it was the Head Teacher who alone had the power to exclude pupils and they could only do so either for a fixed period not exceeding forty-five days in any one school year or permanently. Under section 19(1) of the 1996 Act LEAs had a duty to make arrangements for the provision of suitable education at school or otherwise for children of compulsory school age who had been excluded from school. According to section 19(6) of the 1996 Act, “suitable education” meant education suitable to the child's age, ability and aptitude.

39. The applicant submitted that the exclusions by the school were, from 6 June 2001 at the very latest, totally unlawful acts. The judge at first instance found that this was the case and this finding was not overturned by any of the appeal courts. The applicant accepted that not every unlawful exclusion would be in breach of Article 2 of Protocol No. 1. In particular, he accepted that where a child was unlawfully excluded from school, but was immediately provided with education of the same or a higher standard, there would be no violation of Article 2 of Protocol No. 1. Nevertheless, he submitted that in the present case, to the extent that he was prevented from gaining access to the school at which he was enrolled and which he was entitled under domestic law to attend, he was denied an education in violation of Article 2 of Protocol No. 1 to the Convention.

40. The applicant further submitted that if the right to education was to have any real meaning, then it could not be right that any offer of alternative education could be regarded as “healing” the breach. Before being capable of “healing” a breach of Article 2 of Protocol No. 1, any alternative educational provision on offer would have to be education of the same type, neither inferior nor part-time, and the pupil should not suffer any disadvantage as a result of having to rely on it.

41. Although the applicant disputed that an offer of education at the PRU was made at the beginning of July 2001, he submitted that even if such an offer were made, the alternative education on offer was not capable of healing the breach of Article 2 of Protocol No.1. First, by the date of the alleged offer of alternative education in July 2001, the police had concluded their enquiries, dropped the charges and the fixed-term exclusion period had expired. Consequently, the applicant was entitled to be re-integrated into school and had a right to expect that this would occur. Secondly, by the date of the alleged offer, the applicant had been told by the Head Teacher that he would be re-instated. He was therefore under no obligation to accept alternative, inferior education. Thirdly, the offer of education from the PRU was only an offer of part-time education, for a period of anywhere between

five and fifteen hours a week, and it would only offer a limited range of subjects (maths, English and some science). Fourthly, the alleged offer of education from the PRU was for three weeks only; no further offer of education was made. Moreover, the school did not offer the applicant any form of education after 8 May 2001, even though he remained on the school roll until the middle of October 2001.

42. Finally, the applicant submitted that the alternative education offered to him was not “suitable” within the meaning of section 7 of the 1996 Act as it did not cover the entire national curriculum at the date of the breach or, from September 2001 onwards, the full range of GCSE subjects that he had chosen.

43. The applicant accepted that the breach of his rights under Article 2 of Protocol No. 1 came to an end when he started at the Leon School on 20 January 2002.

(b) The Government

44. The Government accepted that Article 2 of Protocol No. 1 was applicable to the facts of the case as the applicant was, at the relevant time, a child of compulsory school age and thus *prima facie* had a right to an education.

45. The Government submitted that the starting point for considering whether there had been a violation of Article 2 of Protocol No. 1 was not whether there had been a breach of domestic law: there was no support for such an approach either in the Court's case-law or as a matter of first principle. Instead, the protection of the Convention, being practical and not theoretical, should be concerned with what education was in fact available to the child and not with whether or not the exclusion followed a particular procedure prescribed by the domestic law of the Contracting State. In particular, the key question to be asked was whether the authorities had acted so as to deny a pupil effective access to such educational facilities as the State provided for such pupils.

46. The Government further submitted that while the relevance of domestic law had never been directly answered by the Court, the existing case-law was not supportive of the applicant's case. On the contrary, it was well-established that the Convention laid down no specific obligations concerning the extent of the means and the manner of their organisation (*Belgian Linguistics Case*, cited above, p. 18, § 3). The Government therefore argued that the applicant could not establish a violation of Article 2 of Protocol No. 1 by reference to the breaches of domestic law concerning his exclusion from school.

47. Moreover, the Government argued that the applicant's assertion that they were obliged to provide him with an education while he was excluded from the school which was the same as that which he would have received had he not been excluded was inconsistent with principle and with the

Court's case-law. This was because the right to education did not require Contracting States to establish education of any particular type or at any particular level. Given that the content of the curriculum was not a matter prescribed by the Convention, and that the Convention laid down no specific obligations concerning the means of instruction (or the number of hours of education to be provided), and given that the Convention did not prevent children from being excluded in relation to disciplinary matters, it was impossible to conclude that a child who had been excluded was entitled, by reason of the Convention right, to the same education that he would have received had he not been excluded.

48. While the Government accepted that for the right to education to be meaningful, the quality of education would have to reach a minimum standard, they argued that it did not follow that any such minimum standard was to be set by reference to the level of education provided at the school attended by the applicant immediately prior to exclusion, or by reference to the particular content of the national curriculum at any given time, or by the number of hours that the State happened to define as "full-time" education. On the contrary, the right under Article 2 of Protocol No. 1 was no more extensive than an obligation to provide an education suitable to a child's age, ability and aptitude. The question of whether there had been a violation depended on what education was available to the applicant overall, and not on what education was provided by any particular institution.

49. For the reasons given by the House of Lords, the Government submitted that the "very essence" of the applicant's right to education had not been impaired. In particular, they submitted that there was no period of time in which the Local Education Authority would not have provided suitable education for the applicant, and he could not blame the LEA for not repeating offers of education which he had previously refused.

50. The Government submitted that the applicant's arguments were made even weaker by the fact that he never availed himself of the education which was offered during the period of exclusion. Still less did he ever complain at the time, whether in legal proceedings or otherwise, that such an education would have been inadequate to satisfy his right to an education under Article 2 of Protocol No. 1.

2. The Court's assessment

(a) General principles

51. Article 2 of Protocol No. 1 guarantees, *inter alia*, a right of access to educational institutions existing at a given time (see *Belgian Linguistics Case*, cited above, p. 28, § 4 and *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, Series A no. 23, pp. 25-26, § 52). Nevertheless, such access constitutes only a part of the right to education. For the "right to education" to be effective, it is further necessary that, *inter*

alia, the individual who is the beneficiary should have the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each State, and in one form or another, official recognition of the studies which he has completed (*Belgian Linguistics Case*, cited above, p. 28, § 4).

52. The Court recognises that in spite of its importance the right to education is not absolute, but may be subject to limitations. Provided that there is no injury to the substance of the right, these limitations are permitted by implication since the right of access “by its very nature calls for regulation by the State” (*Belgian Linguistics Case*, cited above, p. 28, § 5 and *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 41, Series A no. 48).

53. Admittedly, the regulation of educational institutions may vary in time and in place, *inter alia*, according to the needs and resources of the community and the distinctive features of different levels of education. Consequently, the Contracting States enjoy a certain margin of appreciation in this sphere, although the final decision as to the observance of the Convention's requirements rests with the Court. In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of “legitimate aims” under Article 2 of Protocol No. 1 (see, *mutatis mutandis*, *Podkolzina v. Latvia*, no. 46726/99, § 36, ECHR 2002-II). Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Leyla Şahin v. Turkey* [GC], no. 44774/98, § 154, ECHR 2005-XI).

54. Article 2 of Protocol No. 1 does not necessarily entail a right of access to a particular educational institution (*Simpson v the United Kingdom*, Application No. 14688/89, 24 February 1998). Moreover, the right to education does not in principle exclude recourse to disciplinary measures such as suspension or expulsion from an educational institution in order to ensure compliance with its internal rules. The imposition of disciplinary penalties is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its pupils (see, among other authorities, *Campbell and Cosans v. the United Kingdom*, cited above, p. 14, § 33; see also, with respect to the expulsion of a cadet from a military academy, *Yanasik*, cited above, and the expulsion of a student for fraud, *Sulak v. Turkey*, no. 24515/94, Commission decision of 17 January 1996, DR 84-A, p. 98).

(b) Application in the present case

55. In the United Kingdom, all maintained schools have a duty to provide education in accordance with the national curriculum to every child of compulsory school age on their register. Article 2 of Protocol No. 1 therefore requires that the United Kingdom guarantee to every child of compulsory school age within its jurisdiction, like the applicant in the present case, access to an educational institution or facility which will provide an education in accordance with the national curriculum.

56. Although the applicant was not technically excluded for disciplinary reasons or to ensure compliance with the school's internal rules, the Court finds that the exclusion was in pursuit of a legitimate aim. The Court can readily accept that over and above the need to ensure observance with a school's internal rules, a measure resulting in the suspension of a pupil for a temporary period for reasons relating to an imperative not immediately connected with such rules – such as a criminal investigation into an incident at the school – can be considered justified.

57. In the present case the Court also finds that the applicant's exclusion from school was foreseeable. The Head Teacher's power to exclude pupils is contained in sections 64 – 68 of the 1998 Act. The applicant's initial exclusion was therefore both lawful and foreseeable, even though there were some procedural irregularities. Although the applicant's exclusion subsequently exceeded the maximum period prescribed by the legislation, the Court finds that the continued exclusion was also foreseeable. At the time of the initial exclusion, the applicant was told that he could not return to the school until the police investigation was completed. The reason for this was clear. Other pupils, and indeed members of staff, were potential witnesses and it would have been inappropriate for the applicant to return to the school while the police investigation was ongoing. Consequently, he could have had no realistic expectation of returning to school on 6 June 2001.

58. In determining whether or not an exclusion resulted in a denial of the right to education, the Court will have to consider whether a fair balance was struck between the exclusion and the justification given for that measure. It will therefore have regard to factors such as the procedural safeguards in place to challenge the exclusion and to avoid arbitrariness; the duration of the exclusion; the extent of the co-operation shown by the pupil or his parents with respect to attempts to re-integrate him; the efforts of the school authorities to minimise the effects of exclusion and, in particular, the adequacy of alternative education provided by the school during the period of exclusion; and the extent to which the rights of any third parties were engaged.

59. In the present case, the Court finds that the applicant's exclusion did not amount to a denial of the right to education and was not disproportionate to the legitimate aim pursued. In particular, the Court observes that the

applicant was only excluded until the termination of the criminal investigation. Once the Head Teacher received written confirmation of the cessation of the criminal proceedings, she invited the applicant's parents to a meeting to facilitate his re-integration. Had the applicant's parents attended that meeting, it is likely that he would have been re-integrated. In this regard, the Court recalls that one of the applicant's co-accused was re-integrated into the school after attending this meeting. However, not only did the applicant and his parents not attend the meeting, but they made no further effort to contact the school until mid-October. By this stage, the applicant's name had been removed from the roll and his place at the school had been allocated to another pupil. It is therefore clear that the exclusion was for the minimum period necessary, and the fact that the applicant was not reintegrated into the school following the cessation of the criminal investigation was his fault or that of his parents and not that of the school.

60. Moreover, the Court recalls that the applicant was offered alternative education during the period of exclusion, although he did not choose to avail himself of this offer. While the alternative education did not cover the full national curriculum, the Court accepts that it was adequate in view of the fact that the period of exclusion was at all times considered temporary pending the outcome of the criminal investigation. Article 2 of Protocol No. 1 does not require schools in the United Kingdom to offer alternative education covering the full national curriculum to all pupils who have been temporarily excluded from school. However, the situation might well be different if a pupil of compulsory school age were to be permanently excluded from one school and were not able to subsequently secure full-time education in line with the national curriculum at another school.

61. Finally, while the Court is prepared to accept that the applicant had made a considerable investment in the school, both socially and academically, over the course of a number of years, it cannot ignore the fact that it was the applicant and his family's own intransigence which resulted in his name being removed from the roll. The Court has already noted that had the applicant's parents attended the meeting with the Head Teacher on 13 July 2001, it is likely that he would have been authorised to return to the school following the summer holidays.

62. The Court therefore finds that the applicant's exclusion was a proportionate measure and did not interfere with the substance of the right to education.

63. It is true that at times mistakes were made and procedures were not properly followed. In particular, the school failed to set a time-limit for the initial period of exclusion; the school failed to notify the applicant and his parents of their right of appeal to the Governors; the Governors failed to hold a hearing; and the period of exclusion was extended beyond the 45-day maximum. However, due consideration must be given to the extremely difficult position in which the school found itself on account of the

continuing police investigation. After the expiry of the 45-day period, the legislation required it either to re-integrate the applicant or exclude him permanently. In practice, it could do neither. The applicant could not be re-integrated while the criminal investigation was ongoing, but it would have been equally inappropriate for the school to have excluded him permanently when it had not been established that he had committed any offence.

64. Accordingly, the Court finds that there has been no violation of Article 2 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The applicant also complained that, as the majority of the House of Lords found, he had been unlawfully excluded from school in circumstances which wholly denied the protection afforded to him by domestic law. He had therefore been denied an adequate remedy for a breach of his rights under Article 2 of Protocol No.1. Consequently, he complained that there had been a violation of Article 13 of the Convention, which provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

66. The Court has examined this complaint but finds, in the light of all the material in its possession and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

67. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint under Article 2 of Protocol No. 1 in respect of the period beginning on 6 June 2001 and ending on 20 January 2001 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 2 of Protocol No. 1 to the Convention in respect of the above period.

Done in English, and notified in writing on 11 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Ljiljana Mijović
President