



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

SECOND SECTION

**CASE OF MEHMET REŞİT ARSLAN AND ORHAN BİNGÖL v.
TURKEY**

(Applications nos. 47121/06, 13988/07 and 34750/07)

JUDGMENT

STRASBOURG

18 June 2019

FINAL

07/10/2019

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mehmet Reşit Arslan v. Turkey,

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

Robert Spano, *President*,

Marko Bošnjak,

Işıl Karakaş,

Valeriu Griţco,

Egidijus Kūris,

Ivana Jelić,

Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 18 June 2019,

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

PROCEDURE

1. The case originated in three applications (nos. 47121/06, 13988/07 and 34750/07) against the Republic of Turkey which two nationals of that State, Mr Mehmet Reşit Arslan and Mr Orhan Bingöl, lodged with the Court on 19 October 2006, 26 February and 20 July 2007 respectively pursuant to Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”).

2. Mr Arslan was represented by Mr S. Dalgın, a lawyer practising in Diyarbakır. Mr Bingöl was represented by Ms F. Karakaş Doğan, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their agent.

3. The applicants complained of the fact that they had not been permitted to use a computer or to access Internet, which facilities they considered vital for the continuation of their higher education and the furtherance of their general knowledge. They complained, in particular, of a violation of Article 2 of Protocol No. 1 to the Convention. Furthermore, under Article 6 of the Convention, Mr Arslan complained of the failure to hold a hearing in the framework of the proceedings before the domestic courts.

4. On 4 October 2011 the applications were communicated to the Government. Moreover, on 4 October 2017 the Court invited the parties to submit additional observations.

THE FACTS

5. Mr Mehmet Reşit Arslan is a Turkish national who was born in 1966. In 1992 he was convicted of belonging to an illegal armed organisation, and he is currently serving a life prison sentence.

Mr Orhan Bingöl is a Turkish national who was born in 1973. In 1995 he was convicted of belonging to an illegal armed organisation, and he is currently serving a life prison sentence.

A. Mr Mehmet Reşit Arslan

1. Application no. 47121/06

6. At the material time the applicant had been serving his prison sentence in the İzmir F-type high-security prison.

7. According to the letter of 12 May 2005 signed by the Vice-Dean of Istanbul University faculty of medicine, the applicant, a former student at that faculty, would be able to re-register with the faculty two months after the end of his prison sentence, pursuant to Law no. 5316.

8. On 13 March 2006 the applicant asked the İzmir Prison authorities to give him access to a computer and to Internet, which possibility was provided for, under certain conditions, by section 67 (3) of Law no. 5275 on Sentence Enforcement (“Law no. 5275”).

9. On 24 March 2006, further to the applicant’s request, the Prison Governing and Monitoring Board issued an unfavourable opinion on the grounds that in prison the applicant had maintained relations with the other imprisoned members of the illegal organisation and that he had not registered with any educational institution.

10. The İzmir prison followed the Governing Board’s opinion and rejected the request in question on the basis of section 67 (4) of Law no. 5275, which allowed restrictions, in the case of persons convicted of belonging to an illegal organisation, on the right of access to computer or audiovisual equipment for educational purposes.

11. On 3 April 2006 the applicant applied to the İzmir sentence enforcement judge for the lifting of the restrictions which he alleged the prison authorities had imposed on his right to education. He explained that prior to his conviction he had been a final-year student at the medical faculty, and that in the framework of his higher education, he hoped to be able to use audiovisual material. He also proposed purchasing his own equipment should the prison authorities be unable to provide it.

12. On 4 April 2006, ruling on the basis of the case file, the İzmir sentence enforcement judge dismissed the application.

13. On 14 April 2006 the applicant appealed against the decision of 4 April 2006. He repeated the arguments which he had set out in his application of 3 April 2006. He explained his intention to register for a remote university course. Moreover, he submitted that he had not been the subject of any disciplinary sanctions during his prison term.

14. On 27 April 2006, ruling on the basis of the case file, the İzmir Assize Court dismissed the applicant’s appeal on the grounds that the

decision given by the sentence enforcement judge had been in line with both procedure and the law.

15. The applicant took the general university admissions examination in June 2006 with a view to continuing his higher education via a distance learning programme. After the examination he registered for the 2006-2007 academic year with the Economics and Management Faculty of Anadolu University, which provided distance learning courses.

2. Application no. 34750/07

(a) Request for the return of an electronic device with computing and translation functions

16. During his incarceration in the İzmir F-type Prison, the applicant had purchased, through the intermediary of the prison authorities, an electronic device with computing and English-Turkish translation functions. He had been authorised to use that device in his cell.

17. After the applicant's transfer to a prison in Bolu, the device was removed for safe keeping, and the applicant's request for its return was rejected by the prison authorities on the grounds that the item did not appear on the list of objects authorised under the Decree of 17 June 2005 concerning property and products authorised in prison.

18. On 15 January 2007 the applicant applied to the sentence enforcement judge for the lifting of the restrictions imposed by the prison authorities on his right to education.

19. The sentence enforcement judge gave his decision on 29 January 2007, ruling on the basis of the case file. He pointed out that under Article 15 § 2 of the aforementioned Decree the prison authorities could authorise, within the limits of its financial resources, the instalment and use of items of property in the framework of cultural and educational activities geared to the personal development of convicted persons in places, other than individual cells and their annexes, specially designated by the authorities for that purpose. He specified that electronic translation devices were included in that category. The judge considered that the prison authorities' refusal to allow the applicant to use his device was unlawful, although he pointed out that the relevant legal provisions also prohibited the applicant from keeping the device in question in his cell. Accordingly, he decided to reject the section of the appeal concerning the refusal to authorise the presence of the device inside the cell and to allow the section concerning the refusal to authorise its use. As regards that second section, the judge specified that it was incumbent on the prison authorities to inform the applicant where he could use his device in future, under surveillance.

20. The applicant appealed against that decision. He submitted in support of his appeal that the authorities had decided to authorise the use of the device in the library, but that he himself only had access to the library

once per fortnight, for one hour only. He argued that the preparation of his courses necessitated much more intensive and extensive use of the device. He added that the university itself strongly recommended the use of a computer for certain courses.

21. That appeal was dismissed by the İzmir Assize Court on 16 February 2007, ruling on the basis of the case file.

(b) Request concerning the purchase and use of a computer

22. Meanwhile the applicant had been transferred to the Bolu high-security closed prison. On 9 March 2007 he asked the prison authorities for permission to purchase and use a computer, arguing that he was following an economics and management distance learning course with the Anadolu University, and that the computer courses were compulsory.

23. By decision of 29 March 2007, the prison authorities rejected the applicant's request. They held that although section 67 (3) of Law no. 5275 authorised not only the purchase but also the use of computer equipment, such use was only possible in the framework of cultural, educational and rehabilitation activities, under the supervision of the authorities. They pointed out that in fact section 67 (4) of the same Law allowed restrictions on such rights in respect of persons presenting a degree of dangerousness and of persons, like the applicant, who had been convicted of belonging to an illegal organisation.

24. The applicant appealed to the sentence enforcement judge against that decision. He submitted that the restriction laid down in the aforementioned section 67 (4) was not automatic, since the provision used the auxiliary verb "may" and not "must". According to the applicant, the prison authorities' decision had not stated the reasons why it had considered it necessary to deny him the benefit of that right. He added that other persons convicted on the basis of the same criminal provisions as himself, in other F-type high-security prisons, had been granted computer facilities, for reasons other than that of higher education.

25. The Bolu sentence enforcement judge gave his decision on the basis of the case file on 19 April 2007. Stating that section 67 (3) of Law no. 5275 solely concerned closed prisons (*kapalı ceza infaz kurumları*) and not high-security closed prisons (*yüksek güvenlikli kapalı ceza infaz kurumları*), such as the applicant's prison, the judge considered that there was therefore no need to examine whether or not the applicant belonged to the category of prisoners concerned by paragraph 4 of the same provision, given that, according to the sentence enforcement judge, the applicant had in any case been prevented from using a computer. In other words, the judge held that the authorities' decision to reject the request had been consonant with the law, even though the reasoning used in reaching the decision had been erroneous. As for the applicant's suggestion that some prisoners had access to the facilities in question in other closed high-security prisons, the

judge considered that this was a case of the prison authorities in question misinterpreting the legal texts. He explained that that situation had no impact on the applicant's situation. Consequently, he dismissed the appeal.

26. On 16 May 2007 the Bolu Assize Court, ruling on the basis of the case file, dismissed the applicant's appeal against that decision.

(c) Documents submitted by the Government

27. The Government stated that the applicant had been detained in the Kırıkkale F-type high-security closed prison from 1 February 2008 to 17 December 2013, and that the prison authorities had authorised his participation in university courses via computer. In that connection, they submitted copies of the authorisations for Mr Arslan to use a computer, issued by the prison director's office in 2011.

28. The applicant explained that he had had no access to his computer before 2011 despite several requests which he had submitted pursuant to section 67 (3) of Law no. 5275. He pointed out that from 2011 onwards he had been able to use his computer, albeit in a highly restricted manner. He complained that the enactment of Emergency Legislative Decree No. 677, published in the Official Gazette on 22 November 2016 (see paragraph 38 below), had eliminated any possibility of continuing his studies.

B. Mr Orhan Bingöl

29. Mr Bingöl, a former student at Istanbul University Law Faculty, also sat the general university admissions examination in June 2006 with a view to continuing his higher education via a distance learning programme. He obtained a grade in that examination which he considered sufficient for admission to a higher education institution. The applicant explained that before registering in the computer programming section of the Sakarya University higher technical college, which provided distance learning courses, he had written to that institution for information on their teaching methods.

30. On 1 August 2006 the applicant requested permission from the prison authorities to use a computer and to have access to Internet. He submitted that he wished to continue his studies via a higher education institution providing distance learning courses, and that both the said technical facilities were vital for following the study programmes in question. He added that the deadline for registration was 9 August 2006 and that without the authorisation in question he would be unable to pursue his higher education.

31. On 8 August 2006 the Deputy Directeur of the Ministry of Justice Prisons Department rejected the applicant's request on the basis of section 67 (4) of Law no. 5275.

32. Furthermore, by letter of 10 August 2006, Sakarya University informed the applicant that providing he was registered in their institution, he could postpone his registration to the date of his release from prison, or else follow the learning programme on Internet from prison. According to the case file, the applicant did not register for any university course in the 2006-2007 academic year.

33. At an unspecified date the applicant appealed to the sentence enforcement judge against the prison authorities' refusal. That appeal was dismissed by decision of 23 August 2006. In his decision the judge pointed out that although legislation authorised the use of computer equipment in the framework of cultural, educational or rehabilitation activities, under the supervision of the authorities, it nonetheless allowed restrictions on such rights in respect of persons presenting a degree of dangerousness and of persons who had been convicted of belonging to an illegal organisation. The judge consequently considered the denial of the applicant's request to have been lawful.

34. On 7 September 2006 the Kocaeli Assize Court dismissed the applicant's appeal.

35. The Government presented a document listing the twenty-two disciplinary sanctions imposed on the applicant between 30 December 2003 and 30 January 2008 during his detention in Kocaeli Prison.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

36. Article 42 of the Constitution reads as follows:

“No one shall be deprived of the right of education.

The scope of the right to education shall be defined and regulated by law.

...”

37. The relevant parts of section 67 of Law no. 5275 concerning sentence enforcement provide:

“3. In open or closed prisons and in educational facilities for minors, the use of audiovisual teaching tools in premises set aside for that purpose by the prison authorities is only authorised in the framework of educational or rehabilitation programmes. Internet may be used under supervision and to the extent required by educational and rehabilitation programmes. Computers may be installed in prisons for cultural or educational purposes following a favourable opinion from the Ministry of Justice.

4. Those rights may be restricted in respect of persons presenting a degree of dangerousness and persons convicted of belonging to an illegal organisation.”

38. Article 4 of Emergency Legislative Decree No. 677, published in the Official Gazette on 22 November 2016, provides:

“Persons who have been detained or convicted in the framework of an offence of belonging to a terrorist organisation or for terrorist activities and are detained in

prison may not take general competitive examinations or other examinations organised by any type of educational institution, on the prison premises or elsewhere...”

39. On 10 December 2014 the Turkish Constitutional Court (“the TCC”) delivered judgment after examining a complaint concerning a measure restricting the duration of use of a computer and of Internet access (the period of use of the computer, which had also provided Internet access, had been shortened from 21 hours a week to 15 hours a week) for convicted prisoners serving their sentences in the Kırıkkale F-type high-security prison (see *Mehmet Reşit Arslan and Others*, no. 2013/583 du 10 December 2014). The appeal had been lodged by Mehmet Reşit Arslan, the first applicant, and by other persons, against the measure in question. The TCC had assessed that complaint in the framework of the right to education as guaranteed by Article 42 of the Constitution. In its judgment the TCC found no violation of the right to education, considering that the measure in question had been proportionate and had not deprived the convicted persons of their right to education. Referring, in particular, to Law no. 4675 of 16 May 2001 and section 67 (3) and (4) of Law no. 5275 of 13 December 2004, to the Regulations on Sentence Enforcement No. 2006/10218 of 20 March 2006, and also to Recommendation No. 89/12 on education in prison adopted on 13 October 1989 by the Committee of Ministers of the Council of Europe, it considered that such a complaint fell to be examined under the right to education. The parts of that judgment relevant to the present case read as follows:

“71. The right to education cannot be interpreted as requiring the State to create or subsidise specific educational institutions. However, the State is required to facilitate effective access to existing subsidised institutions Where an educational institution has been set up in a particular prison, convicted persons must have access to such institution.

72. Article 42 of the Constitution does not imply a positive obligation to enable convicted persons to follow an educational programme. However, Law no. 5275, the Regulations on sentence enforcement and the Ministry of Justice circulars have stressed the importance of educational, cultural and social activities for the reintegration of convicted persons into the community, and from the legal angle, the State has undertaken to guarantee teaching and education for convicted persons within the limits of prison financial resources. The international texts also take this line, emphasising that it is vital to ensure the involvement of detainees and prisoners in educational activities. Consequently, an obligation which was provided for neither by the Constitution nor by the Convention (ECHR) was set out in legislation, within the limits of prison financial resources. A prison is therefore required not to hamper access to educational activities provided in another prison.”

In its judgment, the TCC noted that a measure restricting the duration of computer use and Internet access for convicted prisoners had amounted to an interference with the applicants’ right secured under Article 42 of the Constitution. Nevertheless, the TCC took the view that that measure had been acceptable as being a proportionate restriction. In that regard it

considered that the appellants had already started on their distance learning programmes and that the prison authorities had provided them with extensive facilities pursuant to the relevant legislation, that is to say the provision of premises for using a computer with Internet access, albeit with a restriction on the duration of use of the computer and Internet. The TCC held that that restriction had been foreseeable and pursued the legitimate aim of preventing disorder in prison. Furthermore, it took the view that the impugned restriction could be deemed proportionate to the aim pursued inasmuch as it had not been an absolute prohibition but a mere restriction on the duration of use of the facilities, which did not impede distance learning, and the convicted prisoners had also been able to work in their cells.

The Constitutional Court's judgment also dealt with the applicability of the right to a fair trial. In that connection it concluded that some of the restrictions on the rights of detainees and convicted prisoners, who, broadly speaking, continued to enjoy all the fundamental rights and freedoms apart from the right to liberty, were civil in nature, which meant that they should be assessed in the framework of the right to a fair trial, in so far as they were subject to judicial review by sentence enforcement judges. However, that court dismissed several complaints of breaches of that right – including the failure to hold a hearing during the proceedings before sentence enforcement – as being manifestly ill-founded.

III. THE RELEVANT DOCUMENTS OF THE COUNCIL OF EUROPE

40. The Council of Europe documents relevant to the present case concerning prisoners' and detainees' right to education are described in the judgment *Velyo Velevev v. Bulgaria* (no. 16032/07, §§ 21-24, ECHR 2014).

THE LAW

I. JOINDER OF THE APPLICATIONS

41. The Court considers at the outset that in the interests of proper administration of justice and pursuant to Rule 42 § 1 of the Rules of Court the applications should be joined.

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

42. The applicants complained that they had been debarred from using a computer and accessing Internet, which facilities they considered vital for the continuation of their higher education and the furtherance of their general knowledge. They complained of a violation of Article 2 of Protocol No. 1 to the Convention.

Still on the matter of those restrictions, Mr Arslan complained of a violation of Articles 3, 7, 9, 10, 14 and 17 of the Convention. By the same token, Mr Bingöl complained of a violation of Articles 8 and 14 of the Convention, the latter being read in conjunction with Article 8 of the Convention and/or with Article 2 of Protocol No. 1 to the Convention.

The Court observes that the applicants' complaint under those provisions of the Convention concerns their inability to use a computer and to gain access to Internet in prison. That complaint does not specifically concern any particular mode of Internet access to information in the public domain available on a freely accessible website (cf. *Kalda v. Estonia*, no. 17429/10, 19 January 2016, concerning a restriction on a detainee's access to Internet sites publishing legal information, and *Jankovskis v. Lithuania*, no. 21575/08, 17 January 2017, in which the applicant had complained about a restriction affecting a detainee's access to an Internet site providing educational information). Indeed, according to the applicants, their inability, in breach of section 67 (3) of Law no. 5275, to use a computer or to access Internet had had the consequence of depriving them of facilities which were vital for the continuation of their higher education. Being master of the characterisation to be given in law to the facts of a case, the Court considers that the applicants' allegations should be assessed in the light of the first sentence of Article 2 of Protocol No. 1, which reads as follows:

"No person shall be denied the right to education."

A. The parties' submissions

1. The Government

43. As their primary submission, the Government invited the Court to reject this complaint as being incompatible *ratione materiae* with the provisions of the Convention. They stated that Article 2 of Protocol No. 1 did not guarantee an absolute right to all forms of education, particularly higher education and the study of foreign languages.

44. In the alternative, they submitted that there had been no violation of the provision in question for the reasons set out below (see also paragraph 62 below).

45. As regards Mr Arslan's request concerning the use of electronic devices in his cell, the Government pointed out that the applicant had been informed by letter of 4 June 2007 that even though Article 15 § 3 of the Regulations on sentence enforcement did indeed debar him from using such devices in his cell, he could, on the other hand, use them in the prison library, under official supervision. The Government added that like all other convicted prisoners, the applicant could have used the books and other educational materials available in the prison library. Relying on section 67

(4) of Law no. 5275, however, they explained that as a person convicted of terrorist activities, he had not been allowed access to Internet.

46. The Government further observed that Mr Arslan had been detained in the Kırıkkale closed high-security F-type prison from 1 February 2008 to 17 December 2013. They pointed out that that prison's educational board had authorised him to engage in university studies *via* computer, taking account of the fact that Mr Arslan had been following distance learning courses in computer programming provided by Kırıkkale University and that accordingly the applicant had been able to take university courses by computer.

47. As for Mr Bingöl, the Government stated that that applicant had not been admitted to a higher education institution of any kind, and that he could not therefore claim to have been a victim of a violation of the provisions relied upon. They explained that his results in the examination for admission to Sakarya University had been insufficient to register as a student with that higher education institution. They added that even though the applicant could have requested registration with another higher education institution (for example with a distance learning institution), he had not done so. The Government concluded that since the applicant had not been a student, he had not needed a computer or Internet access in order to continue higher education.

2. The applicants

48. Mr Arslan submitted that his applications essentially concerned his inability, in breach of section 67 (3) of Law no. 5275, to use a computer or access Internet. He explained that he had asked for a computer and Internet access not in his cell but, pursuant to that provision, in premises designated for the purpose by the prison authorities. As regards his request concerning the use of an electronic calculator-translator, he argued that he had needed access in his cell to a device with the said functions in order to continue his economics and management studies. He considered that the rejection of his requests had been an additional illustration of the prison authorities' arbitrary attitude. He alleged that the restrictions imposed on him as regards using a computer with Internet access had made it virtually impossible for him to continue his studies.

He added that his request had been rejected on the basis of section 63 (4) of the same Law, in his view without any valid reason. He considered that his status as a person convicted of belonging to an illegal organisation could not have justified such a categorical prohibition, given that his request had been aimed at enabling him to continue his higher education and to further his knowledge, particularly in the linguistic and cultural fields.

49. Moreover, Mr Arslan explained that he had been granted highly restrictive authorisation to use a computer from 2011 onwards, but that fresh restrictions rendering it impossible to continue his higher education

had been issued following the failed military coup on 15 July 2016 (see paragraph 28 above).

50. Mr Bingöl stated that he had sat the university admissions examination and had been admitted to the computer programming section of the Sakarya University higher technical college, which provided distance learning facilities. He added that by letter of 10 August 2006 the university had informed him that he could either postpone his registration until the date of his release or follow the course from prison *via* Internet. He complained that owing to the prison authorities' refusal to authorise him to use a computer and have Internet access, and despite his strenuous efforts to pass the university admissions examination, he had been unable to continue with his higher education. He pointed out that his request for access to a computer and Internet had been rejected arbitrarily and without any valid reason, solely on account of his conviction for belonging to an illegal organisation.

B. The Court's assessment

1. Scope of the first sentence of Article 2 of Protocol No. 1 to the Convention

51. Under the terms of the first sentence of Article 2 of Protocol No. 1, no one can be denied the right to education. Although Article 2 of Protocol No. 1 cannot be interpreted as imposing a duty on the Contracting States to set up or subsidise particular educational establishments, any State doing so will be under an obligation to afford effective access to them. Put differently, access to educational institutions existing at a given time is an inherent part of the right set out in the first sentence of Article 2 of Protocol No. 1 (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (merits), 23 July 1968, §§ 3-4, Series A no. 6; *Ponomaryovi v. Bulgaria*, no. 5335/05, § 49, ECHR 2011; and *Catan and Others v. Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 137, ECHR 2012). That provision applies to the primary, secondary and higher educational levels (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 134 and 136, ECHR 2005-XI).

52. In the present case, the Court observes that in 2006 the applicants had sat the admissions examination for higher education institutions. After the examination, Mr Arslan, a former student in Istanbul University Medical Faculty, had been admitted to the Anadolu University Economics and Management Faculty, which provided distance learning facilities, for the 2006-2007 academic year. Furthermore, Mr Bingöl had obtained a grade which he considered sufficient for him to register at a higher education institution, even though he had not registered at such an establishment for the 2006-2007 academic year.

53. The Court notes that the requests submitted to the prison authorities by the applicants had mainly concerned the use of audiovisual, computing and electronic equipment, and had been aimed at enabling them to prepare for the university admissions examination or to continue their university studies. Consequently, in the Court's view, it is of little relevance whether Mr Bingöl had or had not been registered with a university. It transpires clearly from the case file that both applicants planned to continue their higher education in establishments providing distance learning facilities, and that in 2006 they had accordingly sat the university admissions examination. They had subsequently based their requests for technical equipment on their success in the said examination.

In that regard, as the Turkish Constitutional Court pointed out in its 10 December 2014 judgment, the relevant Turkish legislation (which had already been in force at the time of the events in the present cases) enables convicted persons to continue their education in prison within the limits of the individual prison's financial resources. In particular, according to the Constitutional Court, prisons are required not to impede access to an educational activity provided on their premises. In that connection, section 67 (3) of Law no. 5275 authorised the use of audiovisual training facilities and computers and access to Internet, under supervision, in premises designated for the purpose by the prison authorities in the framework of rehabilitation or training programmes. That clearly provides an indispensable practical means of effectively exercising the right to education, inasmuch as it enables prisoners to prepare for entrance examinations to educational institutions and possibly to continue their studies. According to the Court's established case-law, access to educational institutions existing at a given time is an inherent part of the right set out in the first sentence of Article 2 of Protocol No. 1 (see *Ponomaryovi*, cited above, § 49). It follows that the complaint in question falls within the ambit of Article 2 of Protocol No. 1.

In the light of the foregoing considerations, the Government's objection to the effect that Mr Bingöl lacks victim status should also be rejected.

54. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) Relevant principles

55. The Court emphasises, first of all, that that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention explicitly falls within the scope of Article 5 of the Convention. For example, prisoners may not be ill-treated, subjected to

inhuman or degrading punishment or to conditions contrary to Article 3 of the Convention; they continue to enjoy the right to respect for family life; the right to freedom of expression; the right to practise their religion, the right of effective access to a lawyer or to a court for the purposes of Article 6; and the right to marry. Any restrictions on these other rights must be justified, although such justification may well be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX, together with the judgments cited therein; see also *Velyo Velev v. Bulgaria* (no. 16032/07 § 30). In the *Hirst* judgment (cited above, § 70), the Court stated: “there is no question ... that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction... .”

56. As regards the right to education, 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”. 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. Furthermore, a limitation will be compatible with Article 2 of Protocol No. 1 only if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Although the final decision as to the observance of the Convention’s requirements rests with the Court, the Contracting States enjoy a certain margin of appreciation in this sphere (see *Velyo Velev*, cited above, § 32).

57. It is true that education is an “activity that is complex to organise and expensive to run”, whereas the resources that the authorities can devote to it are necessarily finite. It is also true that in deciding how to regulate access to education, a State must strike a balance between, on the one hand, the educational needs of those under its jurisdiction and, on the other, its limited capacity to accommodate them. However, the Court cannot overlook the fact that, unlike some other public services, education is a right that enjoys direct protection under the Convention. It is also a very particular type of public service, which not only directly benefits those using it but also serves broader societal functions. Indeed, the Court has already had occasion to point out that “[i]n a democratic society, the right to education ... is indispensable to the furtherance of human rights [and] plays ... a fundamental role...” (ibid., § 33).

58. Even though the Court is aware of the Committee of Ministers' recommendations to the effect that educational facilities should be made available to all prisoners (see paragraph 36 above) (see *Velyo Velev*, cited above, §§ 21-24), it reiterates that Article 2 of Protocol No. 1 does not place an obligation on Contracting States to organise educational facilities for prisoners where such facilities are not already in place (*ibid.*, § 34; see also the references therein). It notes, however, that the present applicants' complaint concerns the refusal to them of access to a pre-existing educational institution, namely the possibility of using a computer and Internet, as well as other electronic and audiovisual facilities aimed at training and education, which facilities were vital for the continuation of their higher education and the furtherance of their general knowledge. As noted above, the right of access to pre-existing educational institutions falls within the scope of Article 2 of Protocol No. 1. Any limitation on this right has, therefore, to be foreseeable, to pursue a legitimate aim and to be proportionate to that aim. Although Article 2 of Protocol No. 1 does not impose a positive obligation to provide education in prison in all circumstances, where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions (*ibid.*, § 34).

59. Finally, the Court notes that, as explained above, the restriction on the applicants' right to education was based on the rejection of their requests under section 67 of Law no. 5275 to be allowed to use a computer and have access to Internet in order to be able to continue their chosen academic studies. Basically, therefore, they are not being allowed to request admission to an existing educational programme of their choosing. Consequently, in assessing the applicants' complaint under Article 2 of Protocol No. 1 the Court will take due account of its case-law, hitherto developed under Article 10 of the Convention, on the right of prisoners to Internet access (see *Kalda* and *Jankovskis*, cited above). That case-law shows that in order to determine whether a refusal to provide prisoners with Internet access is justified in a given case, an assessment should be made of whether the domestic courts conducted an adequate evaluation of the actual risks to security inherent in the particular case, thus properly balancing the competing interests.

In its *Kalda* judgment (cited above, § 45), in particular, the Court noted that imprisonment inevitably involves a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information. It considers that Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners. Even though the security-related and economic considerations mentioned by the domestic authorities internes might be deemed relevant, the Court noted that the domestic courts had not conducted any detailed analysis of the possible security risks of authorising the applicant to access the Internet sites in question. In reaching that conclusion,

the Court also had regard to the fact that the courts had confined their analysis on this point to a fairly broad affirmation that granting access to the Internet sites in question could increase the risk of detainees engaging in prohibited communication, thus giving rise to the need for increased levels of monitoring (*ibid.*, § 53; see also *Jankovskis*, cited above, § 61).

(b) Application of those principles to the present case

60. In the instant case, the Court observes at the outset that domestic law granted prisoners the possibility of using a computer and of accessing Internet under certain conditions. Such use could nevertheless be subject to supervision by the prison authorities and to restrictions under the conditions set out in section 67 (4) of Law no. 5275. The Court is prepared to accept that the restriction which were imposed on the applicants' rights in that regard were prescribed by law, even though the prison authorities' approach was rather incoherent. The Court notes that the Government do not specify the legitimate aim sought to be achieved by the impugned measure. It considers that a legal provision governing the use of computers and access to Internet by convicted prisoners might pursue the legitimate aims of preventing disorder and crime. Indeed, according to the aforementioned section 67 (4), the rights in question can be restricted in respect of persons who present a degree of dangerousness or have been convicted of belonging to an illegal organisation.

61. As regards the proportionality principle, the Court will assess the reasons given by the national courts and the Government to justify the impugned restriction, in order to determine whether they were relevant and sufficient and whether the measure was proportionate to the legitimate aim pursued, having regard to the requisite fair balance between the applicants' right to education and the arguments advanced by the Turkish authorities in support of their rejection of the applicants' requests.

62. The Court thus noted that during the domestic proceedings and before the Court the national authorities put forward a variety of arguments to justify the rejection of the applicants' requests to benefit from the facilities provided under Law no. 5275. The request submitted by Mr Arslan on 13 March 2006 was rejected pursuant to section 67 (4) of Law no. 5275, relying on an opinion given by the prison authorities to the effect that the applicant had maintained relations with the other prisoners who were members of the illegal organisation during his prison term, and that he had not registered with any educational establishment. The Court observes that the request submitted by the applicant on 9 March 2007 after his registration with a higher education institution had also been rejected, this time on the grounds that in any event he was not eligible for using a computer on the grounds that convicted prisoners serving their sentences in closed high-security prisons had been categorically excluded from the benefit of section 67 (3) of Law no. 5275. Nevertheless, it transpires from the Government's

observations that the said applicant was allowed to benefit from that right as of 2011. As regards Mr Bingöl, according to the evidence presented by the parties, his requested was rejected pursuant to section 67 (4) of Law no. 5275.

63. During the proceedings before the Court, the Government provided further details on the reasons for the rejection of the applicants' requests. As regards Mr Arslan, who was convicted of terrorism, they referred to section 67 (4) of Law no. 5275, stating that if he had been allowed to access Internet he would have been liable to continue with his terrorist activities. Moreover, according to the Government, Mr Arslan could have used the equipment which he required in the prison library. Accordingly, in the Government's view, the rejection of Mr Arslan's request to be allowed to use the equipment in question in his cell had been justified. In Mr Bingöl's case, the Government considered that the refusal had been justified because that applicant had not registered with any educational establishment and he had been the subject of a large number of disciplinary sanctions.

64. The Court observes that Turkish legislation and practice do not impose a complete ban on the use of computers and access to Internet in prisons, including high-security ones. Section 67 (3) of Law no. 5275 allows convicted prisoners to use audiovisual training facilities and computers and to have access to Internet, under supervision, in premises designated for the purpose by the prison authorities in the framework of rehabilitation and training programmes. In the Court's view, there can be no doubt that the manner and means of regulating the mode of access to such facilities in prison fall within the Contracting State's margin of appreciation. It is enough for the Court to seek to ascertain whether the domestic courts, on the one hand, carried out the requisite balancing of the various competing interests in the present case, and on the other fulfilled their obligation to prevent any abuse on the authorities' part in implementing the relevant domestic rules.

65. The Court observes that section 67 (3) of Law no. 5275 allows prisoners to use a computer and have access to Internet in the premises designated for that purpose by the prison authorities, in the framework of rehabilitation and training programmes. Furthermore, Internet use can be monitored by the authorities to the extent required by the relevant training and rehabilitation programmes. It is undisputed in the present case that the prisons in question could easily have afforded to provide prisoners with the facilities set forth in section 67 (3) of Law no. 5275. Moreover, no practical justification relating to a lack of resources in those prisons was given during the domestic proceedings or before the Court.

66. Furthermore, there is no basis for invalidating the applicants' assertion that their wish to benefit from the facilities provided by the relevant legislation derived from their wish to continue their education, which circumstance the Court deems important in the present case. In 2006

the two applicants had sat the entrance examination to a higher education institution and expressed keen interest in continuing their higher education, which they had interrupted following their final conviction. According to the case file Mr Bingöl had not submitted a request for registration following the prison authorities rejection of his request to use a computer under the conditions set out in the provision in question. Conversely, Mr Arslan was subsequently admitted to a higher education institution.

67. As regards the use in his cell of an electronic device with calculation and English-Turkish translation functions, the Court is prepared to accept the Government's argument that the rejection of the applicant's request was justified, especially since the use of that device was authorised, under supervision, in premises to be designated by the prison. However, it observes that the Court was apprised of that fact in order to illustrate the differences in prison authorities' approaches in that sphere. Indeed, whereas Mr Arslan was allowed to have the device in his cell in Izmir Prison, he was banned from doing so in Bolu Prison by both the prison authorities and the judge on the grounds that the electronic device in question did not appear on the list of items authorised by the 17 June 2005 Decree concerning property and products authorised in prison.

68. As regards Mr Bingöl, it is true that that applicant had been the subject of several disciplinary sanctions and had been convicted for belonging to a terrorist organisation. However, in his decision of 23 August 2006 the Sentence Enforcement Judge had merely cited the provision in question, without advancing any argument to justify the authorities' refusal or balancing the competing interests in the case.

69. It should be remembered in that connection that the value of education in prison was recognised by the Committee of Ministers of the Council of Europe in its Recommendations on education in prison and on the European Prison Rules (see *Velyo Velevev*, cited above, § 41; see also, *mutatis mutandis*, *Jankovskis*, cited above, § 61). The Court reiterates that the manner and means of regulating the mode of access to such facilities in prison fall within the Contracting State's margin of appreciation. In that connection, even though the security considerations advanced by the national authorities and the Government might be considered relevant in the present case, it observes that, as in the cases of *Kalda* (cited above, § 53) and *Jankovskis* (cited above, § 61), the domestic courts conducted no detailed analysis of the security risks and failed, on the one hand, to conduct the requisite exercise of balancing the different competing interests in the present case, and on the other, to fulfil their obligation to prevent abuse on the authorities' part. Under those conditions, the Court is not convinced that sufficient arguments have been advanced in the present case to justify the authorities' rejection of the requests to benefit from the right created under section 67 (3) of Law no. 5275.

70. The same omissions also prevent the Court from effectively exercising its European scrutiny as to whether the domestic authorities implemented the standards established in its case-law on the balancing of competing interests.

71. Examining those circumstances, the Court concludes that during the decision-making process which culminated in the impugned decisions, the judges failed in their obligation to conduct any balancing exercise of the applicants' interests and the requirements of the maintenance of public order.

72. In the light of the foregoing considerations, the Court concludes that the national courts failed to strike a fair balance between the applicants' right to education within the meaning of Article 2 of Protocol No. 1 and the requirements of the maintenance of public order. Accordingly, it rules that in the instant case there has been a violation of the first sentence of Article 2 of Protocol No. 1 in respect of both applicants.

III. THE ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

73. In the framework of applications nos. 47121/06 and 3470/07, Mr Arslan complained of the lack of a hearing during the proceedings before the sentence enforcement judges. He relied in that connection on Articles 6 and 13 of the Convention. The Court will assess that complaint under Article 6 of the Convention.

74. Having regard to the reasoning which had led it to find a violation of Article 2 of Protocol No. 1 to the Convention (see paragraph 71 above), the Court considers that there is no need to examine the admissibility and merits of this complaint.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

76. Mr Arslan made no claim in respect of just satisfaction. The Court considers that there were no particular circumstances in this case which would justify awarding him any sum under this head (see *Nagmetov v. Russia* [GC], no. 35589/08, §§ 57-61, 30 March 2017).

As regards Mr Bingöl, he claimed 20,000 euros (EUR) in respect of and EUR 2,000 in respect of non-pecuniary damage. He also claimed EUR 7,000 in respect of costs and expenses incurred before the domestic courts

and the Court. In support of his claim he merely referred to the fee scales of the Istanbul Bar.

77. The Government contested those claims.

78. As regards pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged. Moreover, it considers that the finding of a violation constitutes in itself sufficient just satisfaction for the pecuniary damage sustained by the applicants.

As for the claims in respect of costs and expenses, the Court reiterates that, according to its constant case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and in the light of Rule 60 §§ 2 and 3 of the Rules of Court, it rejects the claim in respect of costs and expenses because of the absence of supporting documents submitted by the applicant in that connection (see *Hülya Ebru Demirel v. Turkey*, no. 30733/08, § 61, 19 June 2018).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications
2. *Declares* the applications admissible in respect of the complaint under the first sentence of Article 2 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of the first sentence of Article 2 of Protocol No. 1 to the Convention in respect of both applicants;
4. *Holds* that there is no need to examine either the admissibility or the merits of Mehmet Reşit Arslan's complaint under Article 6 of the Convention;
5. *Holds* that the finding of a violation of Article 2 of Protocol No. 1 to the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Bingöl;
6. *Rejects* the latter's claim for just satisfaction.

MEHMET REŞİT ARSLAN v. TURKEY JUDGMENT

Done in French, and notified in writing on 18 June 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Stanley Naismith
Registrar

Robert Spano
President