



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

SECOND SECTION

CASE OF MÜRSEL EREN v. TURKEY

(Application no. 60856/00)

JUDGMENT

STRASBOURG

7 February 2006

FINAL

03/07/2006

In the case of Mürsel Eren v. Turkey,

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

Jean-Paul Costa, *President*,

András Baka,

Rıza Türmen,

Karel Jungwiert,

Mindia Ugrekhelidze,

Danutė Jočienė,

Dragoljub Popović, *judges*,

and Sally Dollé, *Section Registrar*,

Having deliberated in private on 17 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 60856/00) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Mürsel Eren (“the applicant”), on 26 June 2000.

2. The applicant, who had been granted legal aid, was represented by Mr T. Elçi, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) did not designate an Agent for the purposes of the proceedings before the Court.

3. The applicant alleged that his right to education within the meaning of Article 2 of Protocol No. 1 was arbitrarily denied.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 6 June 2002, the Chamber declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Second Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1972 and lives in Ankara. He graduated from secondary school (*lycée*) in 1993 and started sitting his university entrance examinations in 1994.

9. At the relevant time, in order to attend a university degree course in Turkey, would-be students were required to pass a two-tier, multiple-choice examination organised by the Higher Education Council's Centre for the Selection and Placement of Students (*Yükseköğretim Kurulu Öğrenci Seçme ve Yerleştirme Merkezi* – “the ÖSYM”), which was held only once a year. Students who were unsuccessful in the first stage of the examination had the right to re-sit it in subsequent years.

10. The applicant failed to pass the first stage of the university entrance examination in his first three attempts between 1994 and 1996. He was not therefore allowed to proceed to the second and final examination during that time.

11. The applicant attended a private course in Ankara in order to prepare for the 1997 examinations. He submitted that during this course he studied very hard and, on occasion, obtained the highest marks in his class in mock examinations.

12. In the first stage of the examinations in 1997, the applicant obtained 131 points which enabled him to proceed to the second stage, the required minimum being 105 points. After the second examination the applicant believed that he had been successful and that he would obtain sufficient points to qualify for access to one of the university programmes he had selected in his application form. When the exam results were announced, the applicant found that his name was not on the list of successful students who were allowed to enrol at a university. When he contacted the ÖSYM he was informed that he had obtained 493 points in his second examination.

13. By a letter of 11 August 1997, the applicant asked the ÖSYM why he had not been selected for a university place of his choice, given his good results.

14. The ÖSYM, in its reply of 12 August 1997, informed the applicant that he had obtained one of the highest results among the students who had sat the second examination, but that his exam results had been annulled on the advice of an academic council, consisting of three professors, which had found that, given his poor results in the previous years, his excellent achievement could not be explained. The letter of the ÖSYM contained no indication that it suspected the applicant of any impropriety.

Proceedings before the administrative courts

15. On 27 August 1997 the applicant, through the assistance of a lawyer, applied to the Supreme Administrative Court (*Danıştay*) and requested that “the decision of the ÖSYM, which had no precedent”, be suspended and annulled, otherwise “his right to university education would be breached”. He argued that the fact that his previous exam results were not good did not mean that he would never succeed in passing subsequent examinations.

16. According to the judge rapporteur of the Supreme Administrative Court appointed in the case, the decision of the ÖSYM was based on pure supposition and should be annulled as it was devoid of any legal basis. However, on 10 October 1997, the Eighth Division of the Supreme Administrative Court, by a majority of three to two, rejected the application to annul the decision of the ÖSYM, finding that it was inexplicable for a student who had obtained very poor results in his previous exams to be so successful in subsequent examinations. The minority argued in their dissenting opinion that the authorities had a duty to organise the examinations properly and that it was their responsibility to prove, with adequate evidence, any impropriety such as cheating.

17. The applicant's appeal, lodged on 30 October 1997, was dismissed by a majority of ten to five on 28 November 1997 by the Supreme Administrative Court's General Council of Administrative Divisions (*Danıştay İdari Dava Daireleri Genel Kurulu*).

18. On an unspecified date the applicant asked, in a further application submitted to the Eighth Division of the Supreme Administrative Court, for the decision of the ÖSYM to be annulled. On 5 November 1998 the request was rejected by the same court after it had examined the case on its merits, by a majority of four to one.

19. On 30 December 1998 the applicant appealed and sought an injunction suspending the decision of the ÖSYM while the appeal was being examined.

20. On 29 January 1999 the Supreme Administrative Court's General Council of Administrative Divisions began examining the applicant's request for an injunction but decided to postpone the matter until after the conclusion of the appeal.

21. The appeal against the decision of 5 November 1998 was dismissed on 15 March 1999 by the Supreme Administrative Court's General Council of Administrative Divisions, by a majority of eight to seven. The majority concluded that the applicant had not achieved the result through his own knowledge and ability. The minority argued in their dissenting opinion that the ÖSYM had a duty to take measures in order to ensure that university entrance examinations and the subsequent steps leading to selection for a university place were conducted properly. The ÖSYM had the obligation and power to punish candidates who breached the laws and regulations, if so

established on the basis of adequate evidence. According to the minority, the ÖSYM could not hold the applicant responsible for the consequences of its own failures. It could only review its procedures and take measures to prevent the repetition of such situations.

22. On 8 June 1999 the applicant asked for a rectification of the decision of 5 November 1998, which is the final remedy in Turkish law in administrative matters.

23. On 19 November 1999 the application for the rectification of the decision was rejected by the Supreme Administrative Court's General Council of Administrative Divisions. This decision was taken by a majority of eight to seven and was served on the applicant on 30 December 1999.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Article 42 of the Turkish Constitution provides that no one shall be denied the right to education or to instruction.

25. According to section 10 of the Higher Education Act of 1981 (Law no. 2547), the ÖSYM – the Higher Education Council's Centre for the Selection and Placement of Students – is an organisation which, in the context of principles established by the Higher Education Council, and in order to select students for admission to institutions of higher education, prepares tests, administers them, evaluates the results and, having regard to the preferences expressed by the successful candidate, effects their placement at universities and other higher educational institutions.

26. The relevant part of section 45 of Law no. 2547 provides as follows:

“Students are placed at higher education institutions by passing an examination, the principles of which are determined by the Higher Education Council. The evaluation of the exam results takes into account the student's secondary school grade average ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 1

27. The applicant complained that the ÖSYM's decision to annul his exam results arbitrarily denied him his right to education under Article 2 of Protocol No. 1. The relevant part of this provision reads as follows:

“No person shall be denied the right to education. ...”

A. The parties' submissions

1. The applicant

28. The applicant submitted that the decision of the ÖSYM, which was based on the recommendation of an academic council, was devoid of any legal basis. He argued that he had satisfied the university entrance conditions as he had successfully passed the examination without there being any question of impropriety, but that these facts had not been taken into account by the administrative courts.

29. As regards the Government's references to his unsuccessful performance throughout his secondary education, the applicant submitted that he had completed his secondary education in Diyarbakır, in the south-east of Turkey, during a period when violence in that region was at its peak. He argued that Diyarbakır was located in a region which was considerably underdeveloped in comparison with other regions of Turkey. Furthermore, the quality of teaching was also substantially lower than at schools in other parts of Turkey since the majority of teachers appointed to south-east Turkey had either asked to be posted elsewhere or had resigned out of concern for their security. A substantial number of classes throughout his secondary education had had to be cancelled due to the lack of teachers. In support of his argument, the applicant referred to information provided by the Government in relation to the other eighteen candidates whose exam results had been annulled that year (see paragraph 35 below). Almost all of these candidates came from the east or south-east of Turkey.

30. The applicant stressed that it was not his argument that the State was under a positive obligation to provide him with a university education. Rather, he claimed that he had obtained a right to education, in accordance with domestic law, and that that right ought not to be violated unlawfully. In the opinion of the applicant, the decision of the academic council was arbitrary and violated his right to education within the meaning of Article 2 of Protocol No. 1.

2. The Government

31. The Government, referring to the *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* ((merits), 23 July 1968, pp. 30-31, § 3, Series A no. 6 – "the *Belgian linguistic case*"), confirmed that the right to education within the meaning of Article 2 of Protocol No. 1 comprised the right to avail oneself of the means of instruction existing at a given time. According to the Government, this right referred to all levels of education. They submitted, however, that the scope of the right to education may vary from one country to another and is subject to developments. If a new branch or a new type of education is

introduced in a particular Contracting State, persons in that country have a right of access to it, provided that they satisfy the conditions of admission.

32. The Government informed the Court that nearly all institutions of higher education in Turkey have, since 1974, accepted students in accordance with the results of the examinations organised by the ÖSYM. The ÖSYM, which was established pursuant to Law no. 2547, determined the rules of the university exams and published regulations in order to provide guidance for candidates.

33. The Government pointed out that in Turkey, as in most other countries, the demand for higher education far exceeded the places available. The ÖSYM took into consideration four factors in the selection and placement of students in higher education programmes. These were the quota, in other words, the maximum number of students to be admitted to each higher education programme, the ranking in the marks of the candidates wishing to enter the same higher education programme, the candidates' personal list and ranking of higher education programmes and, finally, the special requirements of the higher education programmes. Most of the ÖSYM's actions, such as the distribution of candidates to the examination halls, the checking of application forms, the marking of the examination papers, the computing of scores and, finally, the placement of candidates in the university programmes, were carried out by electronic systems. The success of a candidate was essentially evaluated on the basis of their performance in the examinations, together with their academic achievement in secondary school. Candidates received an extra weighting for their secondary school grade averages; those averages were multiplied by 0.5 and added to the exam marks.

34. Section 3 of the ÖSYM Regulations dealt with the evaluation of the answers. Section 3(6) of the Regulations provided that, in the event of a candidate being suspected of cheating during the exam, the answers given by that candidate, which would have been marked by computers, would be scrutinised by an academic council consisting of three professors from three different universities.

35. The academic council in the present case had been convened pursuant to this clause in order to assess whether the applicant and a number of other candidates who had taken part in the second stage of the examination that year had cheated. It considered that the excellent achievement of nineteen candidates, including that of the applicant, could not possibly be explained since these candidates had obtained poor results in the previous years' exams.

36. In accordance with the main principle of the science of evaluation and assessment, the academic council had further considered that the most reliable indication of a candidate's future academic success was his or her past achievements. Comparing the past performance of the applicant with his achievement in the second stage of the examination in 1997, the

academic council concluded that, due to the short period between the first stage and the second stage of the exams in 1997, the applicant's excellent achievement could not be explained. The decision of the academic council also took into account the fact that the applicant, who had not been a successful student during his secondary school education, his graduation mark being 5.31 out of 10, had failed to pass the university entrance examinations between 1994 and 1996. In 1997 the applicant had obtained only just enough points to allow him to sit the second stage of the examination.

37. The Government invited the Court to have regard to the fact that the assessment carried out in the applicant's case had taken place in the framework of one of the main tasks of the ÖSYM, namely ensuring the fairness of university entrance exams and selecting and placing those students with the highest probability of success in the available higher education programmes. If the applicant's exam results had not been annulled, he would have ranked among the most successful students and thereby would have been eligible for enrolment in one of the first universities of his choice. This would have led to a disturbance among other students as there would be doubts as to how the applicant, who had not been a successful student at secondary school, had succeeded in obtaining a place at university.

38. According to the Government, the ÖSYM had exercised its discretion in denying the applicant access to university education bearing in mind the fair placement of students. Referring to *Masson and Van Zon v. the Netherlands* (28 September 1995, § 51, Series A no. 327-A), the Government argued that the ÖSYM had such a broad discretion in the matter that, in fact, no actual right to be accepted at a university was recognised in law.

39. The Government concluded that the applicant had failed to satisfy the conditions of admission to higher education established by the ÖSYM, and had therefore not been denied the right to education.

B. The Court's assessment

1. Applicability of Article 2 of Protocol No. 1

40. The Court observes that it is not disputed between the parties that the applicant was unable to gain access to university education despite the fact that, following the relevant entrance examinations, he had received the required mark to attend a university degree course of his choice.

41. The Court also observes that it is not disputed that the guarantees of Article 2 of Protocol No. 1 apply to existing institutions of higher education within the member States of the Council of Europe. It recently confirmed this principle in *Leyla Şahin v. Turkey* ([GC], no. 44774/98, §§ 134-42,

ECHR 2005-XI), in which it held that access to any institution of higher education 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.

2. Whether the academic council had discretion to annul the applicant's exam results

(a) The Government

42. According to the Government, the academic council based its decision to annul the exam results of the applicant on section 3(6) of the ÖSYM Regulations which provided that in the event of a candidate being suspected of cheating during the exam the answers given by that candidate, which would have been marked by computers, would be scrutinised by an academic council consisting of three professors from three different universities. The ÖSYM also had a general obligation to ensure the fairness of university entrance examinations and the selection and placement of students. The Government concluded that, in the light of these obligations, the ÖSYM had such a broad discretion that, in fact, no actual right to a university place was recognised in law (see paragraph 38 above).

(b) The applicant

43. The applicant maintained that he had acquired the right to enter university by having complied with the relevant domestic regulations, but that his right to education was arbitrarily and unfairly denied.

(c) The Court

44. The Court held in the *Belgian linguistic case* that the right to education guaranteed by the first sentence of Article 2 of Protocol No. 1 “by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention” (see the *Belgian linguistic case*, cited above, p. 32, § 5).

45. The Court observes, at the outset, that the applicant did not challenge the entrance criteria themselves but submitted that he was arbitrarily denied the right he had acquired after he had satisfied those criteria.

46. In the opinion of the Court, the Government have failed to point to any legal basis for the ÖSYM's discretion to annul the exam results of candidates on the ground of their inability to explain their success. The Court finds, in any event, that any legal basis for such a broad discretion might create such legal uncertainty as to be incompatible with the rule of law, one of the basic principles of a democratic society enshrined in the

Convention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI), or injure the very substance of the right to education (see paragraph 44 above).

47. The Court emphasises at this juncture that annulling the exam results of a candidate who is found to have cheated during the exam is not an action left to the discretion of the ÖSYM, but is one of that organisation's duties (see paragraph 34 above). In this regard, it should be noted that neither the academic council nor any of the administrative courts found any proof of impropriety on the part of the applicant in the present case.

48. The Court observes that the results achieved by participants in Turkey's university entrance examinations are calculated in a highly elaborate way which leaves no leeway for the authorities to substitute the results of the computerised systems marking the exam papers with their own personal views. Indeed, the clear wording of the ÖSYM's regulations allows bona fide students to form the legitimate expectation that they will be able to attend the university course for which they have obtained the necessary marks at the exam. In other words, where legislation lays down conditions for the admission to a university and candidates for admission satisfy those conditions, they have a right to be admitted to that university (see, *mutadis mutandis*, *De Moor v. Belgium*, 23 June 1994, § 43, Series A no. 292-A).

49. The Court is of the opinion that the ÖSYM's regulations afford a measure of legal protection against arbitrary interference by public authorities with the right to education, a right safeguarded by the Convention. It follows, therefore, that if public authorities override or ignore these regulations, that legal protection will be damaged.

50. In the absence of any proof of the applicant having cheated – or even any explicit accusation levelled against him to that effect – and bearing in mind his undisputed submission that he had prepared for the 1997 examinations by attending a private course, the Court finds untenable the conclusion reached by the academic council that his good results could not be explained. It concludes, therefore, that the decision to annul the applicant's exam results, which was subsequently upheld by the domestic courts, lacked a legal and rational basis, resulting in arbitrariness.

51. In the light of the foregoing, the Court concludes that the ÖSYM, by annulling the applicant's exam results on the basis of the academic council's advice, denied the applicant his right to education.

52. It follows that there has been a violation of Article 2 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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.”

A. Pecuniary damage

54. The applicant claimed the sum his family had had to pay for his private tuition and keep at the time (see paragraph 11 above): 2,000 euros (EUR) for his course fees and EUR 2,000 for his living expenses, such as lodging, transport, books, etc.

55. The Government submitted that the applicant had not produced any evidence to substantiate this claim. They further objected to the applicant's claims for “contingent earnings” and invited the Court to dismiss them.

56. The Court observes that the applicant's claim in respect of pecuniary damage related not to any loss of earnings – as claimed by the Government – but to the expenses he had incurred when he was attending the private preparatory course. However, the Court finds no causal connection between the matter found to constitute a violation of the Convention – the denial of the right to education – and the pecuniary damage alleged by the applicant. It therefore dismisses the applicant's claim under that head.

B. Non-pecuniary damage

57. The applicant submitted that his exam results had been annulled just as he was planning to go to one of the most prestigious universities in Turkey. This had come as a shock to him and he had suffered psychological problems. He therefore claimed the sum of EUR 100,000 for the suffering he had endured.

58. The Government were of the opinion that the applicant was seeking to make a profit out of the Convention proceedings. His lawyer had also abused the proceedings by transforming them into a veritable business in which income could be generated at random.

59. The Court finds that the actions of the ÖSYM must have caused the applicant frustration and distress. It considers, therefore, that an award of compensation is justified. Deciding on an equitable basis, the Court awards the applicant the sum of EUR 5,000.

C. Costs and expenses

60. The applicant claimed a total of EUR 2,755 for the fees and costs incurred in bringing the application. This sum consisted of EUR 2,400 for his lawyer's fees and EUR 355 for translation and stationery expenses. In support of his claim, the applicant submitted a schedule of costs.

61. The applicant further claimed that during the domestic proceedings he had spent a total sum of EUR 6,000 to pay for his lawyer and other expenses associated with bringing his complaints to the attention of the domestic courts.

62. The Government submitted that only expenses actually incurred could be reimbursed and such reimbursement required that all costs and expenses be documented by the applicant or his representative. They argued that no receipts or documents had been produced by the applicant's representative to demonstrate the costs and expenses he claimed. Finally, the time allegedly spent by the applicant's lawyer on the Convention proceedings was unreasonable.

63. According to the Government, the applicant's claim for costs and expenses incurred during the domestic proceedings was insufficiently precise to permit anything other than an equitable assessment; the amounts sought in respect of those proceedings related partly to work on questions that were not material to the case before the Court and partly to work that was unnecessary. The hourly charge, though acceptable for the Convention proceedings, was excessive for the domestic proceedings.

64. The Court finds the claims for costs and expenses claimed by the applicant in respect of the Convention proceedings to be reasonable.

65. As regards the costs claim for the domestic proceedings, the Court observes that the applicant has not provided any details or schedule of costs showing the hours spent by his lawyer on this work. It cannot, therefore, assess whether the sum of EUR 6,000 was necessarily or reasonably incurred.

66. The Court reiterates that, if it finds that there has been a violation of the Convention, it may award the applicant the costs and expenses incurred before the national courts for the prevention or redress of the violation (see *Société Colas Est and Others v. France*, no. 37971/97, § 56, ECHR 2002-III, and the cases cited therein). In the present case, the proceedings in Turkey concerned the applicant's right to higher education and the applicant specifically referred to that right at the outset of the proceedings when he applied to the Supreme Administrative Court on 27 August 1997 (see paragraph 15 above).

67. In the light of the foregoing, and deciding on an equitable basis in the absence of a detailed schedule of costs and expenses in respect of the domestic proceedings, the Court awards the applicant the total sum of

EUR 5,000 for the costs and expenses incurred in both the domestic proceedings and the proceedings before the Court.

D. Default interest

68. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Holds*, by six votes to one, that there has been a violation of Article 2 of Protocol No. 1;
2. *Holds*, by six votes to one,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into new Turkish liras at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that the respondent State is to pay the applicant, within the same three-month period, EUR 5,000 (five thousand euros) in respect of costs and expenses, together with any value-added tax that may be chargeable, less EUR 630 (six hundred and thirty euros) granted as legal aid, to be converted into new Turkish liras at the rate applicable at the date of settlement;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
3. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 February 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé
Registrar

Jean-Paul Costa
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Popović is annexed to this judgment.

J.-P.C.
S.D.

DISSENTING OPINION OF JUDGE POPOVIĆ

The majority of judges have found a violation of Article 2 of Protocol No. 1 in this case. Much to my regret I could not follow the majority for the reasons stated below.

To my mind, the case concerns three different aspects, which might be labelled as the scope of the right to education (1), the right to be admitted (2), and the setting and planning within the educational system, together with questions of expediency (3).

1. Scope of the right to education

The rule in the *Belgian linguistic case* (Case “relating to certain aspects of the laws on the use of languages in education in Belgium” (merits), 23 July 1968, pp. 30-31, § 3, Series A no. 6) determines the scope of the right to education within the meaning of the first sentence of Article 2 of Protocol No. 1. It provides to persons subject to the jurisdiction of the Contracting Parties “the right, in principle, to avail themselves of the means of instruction existing at a given time”.

The applicant was admitted to the Turkish system of education. He did not complain about its rules and it is therefore clear that he had to submit himself to the rules applicable within the educational system, as far as admission to universities is concerned.

2. Right to be admitted

The rule in *De Moor v. Belgium* (23 June 1994, § 43, Series A no. 292-A) states that “where legislation lays down conditions for the admission ... and a candidate for admission satisfies those conditions, he has a right to be admitted”.

The applicant in the present case failed to satisfy conditions for enrolment at a university, because he did not pass the entrance examination. His results achieved in the written test of the second round of examinations were annulled by the academic council, an independent body of three scholars from different universities. The applicant did not contest either the proceedings or impartiality of any member of the academic council. The latter issued a decision based on equity. As the applicant was asked to submit reasons for his extraordinary success in the second round of written examinations, his only submission was that it had been an outcome of his preparations. Such a submission was, however, devoid of value, for the preparations had taken place before the first round of written examinations. The latter had had only a rather poor impact on the applicant's result in the first round, but they inexplicably and suddenly became extremely fruitful in the second round. For that reason, the academic council issued a decision on equity and annulled the results of the applicant's written test. Admitting the

applicant to university in such circumstances might have disturbed the fair placement of candidates at universities in general.

3. Setting and planning within the educational system

The rule in *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (7 December 1976, § 53, Series A no. 23) provides that, according to Article 2 of Protocol No. 1, “the setting and planning of the curriculum fall in principle within the competence of the Contracting States”. It also “involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era”.

In the present case, the questions concerning entrance exams to universities at the national level certainly concern problems of expediency, but they are also to be assumed to be applicable in respect of the curriculum. If a Contracting State is allowed to prescribe university curricula, then it must also be allowed to prescribe conditions under which candidates should be admitted to follow courses offered in the curricula.

On none of the three points raised in the present case could I find a violation of Article 2 of Protocol No. 1. The applicant was in a fair position to enjoy his right to education, but he failed to fulfil the conditions for admission to university. Furthermore, the margin of appreciation of the respondent State allowed it to act as it did in this case, in order to achieve nationwide a fair placement of candidates at universities.

Finally, I consider that the case is of a “fourth instance” nature. The applicant was able to challenge twice the decision of the academic council before the administrative courts of Turkey. In both sets of proceedings the domestic courts found against the applicant. The applicant basically complained of the outcome of those proceedings. This Court should not interfere with the margin of appreciation of the courts at the national level; nor should it control the assessment of facts carried out by national courts.