



## Reasons for refusing to enrol remand prisoner in prison school were not clear

In today's Chamber judgment in the case of [Velev v. Bulgaria](#) (application no. 16032/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 2 of Protocol No. 1 (right to education) of the European Convention on Human Rights**

The case concerned access to education for a remand prisoner. Mr Velev alleged that he had not been allowed to pursue his secondary education while being detained on remand in Stara Zagora Prison for 29 months.

The Court recalled that Article 2 of Protocol No. 1 does not oblige Contracting States to organise educational facilities for prisoners where such facilities are not already in place. Where such a possibility is available, as is the case in Stara Zagora Prison, there being a prison school, it should not be subject to arbitrary and unreasonable restrictions.

However, the Government had provided neither practical reasons, for example based on lack of resources at the prison school, nor a clear explanation as to the legal grounds for refusing to enrol Mr Velev in the prison school. Indeed, this lack of clarity was reflected in the relevant statutory framework itself. The Court therefore found that the refusal had not been sufficiently foreseeable, had not pursued a legitimate aim and had not been proportionate to that aim, underlining in particular the value of providing education in prison, both for the individual prisoner and the prison environment and society as a whole.

### Principal facts

The applicant, Velyo Velev, is a Bulgarian national who was born in 1977 and lives in Stara Zagora (Bulgaria). He was arrested in October 2004 on suspicion of unlawful possession of firearms and detained on remand in Stara Zagora Prison for the next 29 months.

His requests to be allowed to attend the school operating inside the prison so that he could complete his secondary education were refused, first by the prison authorities and ultimately in a final judgment of September 2006 by the Supreme Administrative Court.

The national authorities gave a variety of reasons to justify refusing to enrol Mr Velev in the school, notably it was not allowed to mix prisoners who had no prior convictions with those who had, like Mr Velev, and the right to education was only applicable to those deprived of their liberty as a result of a final conviction and not to those detained on remand.

Mr Velev was ultimately convicted of the firearms offence and in April 2007 was transferred to Pazardjik Prison to serve his sentence. He was released in July 2008.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Complaints, procedure and composition of the Court

Relying in particular on Article 2 of Protocol No. 1 (right to education) of the European Convention, Mr Velev complained that he had not been allowed to pursue his education while in Stara Zagora Prison. He also alleged under Article 6 § 2 (presumption of innocence) of the Convention that the prison authorities had assumed that he was guilty by detaining him along with repeat reoffenders and, for that reason, also refused him access to the prison school, even though there had been no final conviction in his case.

The application was lodged with the European Court of Human Rights on 5 March 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Ineta **Ziemele** (Latvia), *President*,  
Päivi **Hirvelä** (Finland),  
Ledi **Bianku** (Albania),  
Nona **Tsotsoria** (Georgia),  
Zdravka **Kalaydjieva** (Bulgaria),  
Paul **Mahoney** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

## Decision of the Court

### Article 2 of Protocol No. 1 (right to education)

The Court recalled that the right of access to pre-existing educational institutions fell within the scope of Article 2 of Protocol No. 1. Any limitation on this right had, therefore, to be foreseeable, to pursue a legitimate aim and to be proportionate to that aim. Furthermore, Article 2 of Protocol No. 1 does not oblige Contracting States to organise educational facilities for prisoners where such facilities are not already in place. However, where such a possibility is available, as is the case in Stara Zagora Prison, there being a prison school, it should not be subject to arbitrary and unreasonable restrictions.

The Court found it open to doubt whether the refusal to allow Mr Velev to attend prison school had been sufficiently foreseeable for the purposes of Article 2 of Protocol No. 1. The only express provision in domestic law relating to the rights of remand prisoners to education was to the effect that the prison authorities should “encourage” the participation of remand prisoners in prison educational programmes.

Indeed, this lack of clarity in the statutory framework was reflected in the fact that, during both the domestic proceedings and the proceedings before the European Court, varied reasons were given by the national authorities for refusing Mr Velev’s request to enrol in the school.

Nor did the Court consider persuasive any of the grounds relied on by the Government for refusing Mr Velev access to the prison school, particularly as they were not supported by any evidence on the precise modalities of providing access to education at the Stara Zagora prison school. Firstly, the need to protect Mr Velev by keeping him apart from convicted prisoners was not backed up by any evidence to show that remand prisoners would have come to any harm within the controlled and supervised environment of the classroom or that remand prisoners were detained separately from convicted or “recidivist” prisoners within Stara Zagora prison and, if so, whether this segregation applied to all aspects of the regime within the prison. Nor had Mr Velev himself objected to attending school with convicted prisoners. Secondly, the Court did not consider that the fact that the ultimate length of remand prisoners’ pre-trial detention was uncertain should be used as a

justification for depriving them of access to educational facilities. Moreover, the Government did not provide the Court with any statistical information as regards the availability of resources at the school to justify, for example, a policy of concentrating limited resources on those prisoners serving the longest sentences. Lastly, the Court did not consider it legitimate to keep Mr Velev apart from other prisoners because of the risk that he would be sentenced as a “recidivist”, since during the time in question he had been an unconvicted prisoner and entitled to the presumption of innocence.

On the other side of the balance had to be set Mr Velev’s undoubted interest in completing his secondary education. The value of providing education in prison, both in respect of the individual prisoner and the prison environment and society as a whole has been recognised by the Committee of Ministers of the Council of Europe in its recommendations on education in prison and on the European Prison Rules.

In conclusion, the Government provided neither practical reasons, for example based on lack of resources at the school, nor a clear explanation as to the legal grounds for refusing to enrol Mr Velev in the prison school. In these circumstances, on the evidence before it, the Court found that the refusal to enrol Mr Velev in the Stara Zagora Prison School had not been sufficiently foreseeable, had not pursued a legitimate aim and had not been proportionate to that aim. There had therefore been a violation of Article 2 of Protocol No. 1 in this case.

### Other articles

The Court considered that it was not necessary to examine separately Mr Velev’s complaint under Article 6 § 2.

### Article 41 (just satisfaction)

The court held that Bulgaria was to pay Mr Velev 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,406 for his lawyer’s costs and expenses.

*The judgment is available only in English.*

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court’s press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### Press contacts

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)**

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.