

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

SECOND SECTION

DECISION

Application no. 37866/18
Hüseyin UZUN
against Turkey

The European Court of Human Rights (Second Section), sitting on 10 November 2020 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Valeriu Griţco,
Egidijus Kūris,
Darian Pavli,
Saadet Yüksel,
Peeter Roosma, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 16 March 2018,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Hüseyin Uzun, is a Turkish national who was born in 1971 and is detained in Burdur Prison. He is represented before the Court by Mr Z. Kiraz Karaoğlu, a lawyer practising in Denizli. The Turkish Government ("the Government") are represented by their Agent.

The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The applicant has been enrolled since 2013 in the University of Anadolu's distance-learning programme, working towards a Bachelor's degree in Public Administration.

4. On 20 July 2016 a state of emergency was declared. During the state of emergency, the Council of Ministers passed several Legislative Decrees under Article 121 of the Constitution. One of those texts, Legislative Decree no. 677, published in the Official Gazette on 22 November 2016, prohibited prisoners who were detained or convicted in connection with a terrorist offence from sitting any kind of examination.

5. On 2 August 2016 the applicant was placed in pre-trial detention on suspicion of belonging to the organisation FETÖ/PDY (*Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması,* "Fetullahist Terror Organisation/Parallel State Structure").

6. On 23 November 2016 the prison authorities sent the applicant a copy of Legislative Decree no. 677 and informed him that, pursuant to Article 4 of the Legislative Decree, he could not sit his university examinations throughout the duration of the state of emergency and throughout the duration of his imprisonment.

7. On 22 December 2016 the applicant lodged an individual application with the Constitutional Court. He alleged that the prohibition imposed by Legislative Decree no. 677 had breached his right to education.

8. On 18 June 2018 the Constitutional Court dismissed that application as manifestly ill-founded. It held that the refusal to authorise the applicant to sit his examinations amounted to an interference with his right to education, that the interference was based on Article 4 of Legislative Decree no. 677, incorporated in Law no. 7083, and that it pursued a legitimate aim, namely to ensure discipline and security within the prison. After setting out the case-law, it indicated that, following the attempted *coup d'état*, many persons accused of terrorist offences had been placed in detention and/or convicted of such offences and that, at the same time, the number of prison officers responsible for ensuring the security and protection of prisoners had been reduced significantly. According to the Constitutional Court, in view of those circumstances and of its decision in the case of *Mehmet Ali Eneze* (see paragraphs 13-19 below), it could not be claimed that the impugned restriction on the applicant's right to education was not necessary in a democratic society. In consequence, the Constitutional Court concluded that a fair balance had been maintained between the aims pursued by the restriction and the applicant's interest in continuing his studies.

9. After the state of emergency was lifted on 18 July 2018 the applicant re-enrolled at university and sat his exams. He is still a student, and is enrolled in the 8th semester of the bachelor's programme.

Relevant domestic law and practice

10. Article 42 of the Constitution is worded as follows:

> "No one may be deprived of the right to instruction and education.
>
> The scope of the right to education shall be defined and regulated by law.
>
> ..."

11. Article 4 of Legislative Decree no. 677, adopted on 31 October 2016 and published in the Official Gazette on 22 November 2016, is worded as follows:

> "Measures concerning examinations
>
> Persons who are being held in prison because they have been detained on suspicion of membership of a terrorist organisation or terrorist acts, or convicted of one of those offences, may not, so long as the state of emergency is in force and so long as they are in prison, sit nation-wide competitive examinations and tests organised by any type of educational and teaching establishments, whether within or outside the premises of the prison."

12. The content of Article 4 of Legislative Decree no. 677 was incorporated into Law no. 7083 (Law approving Legislative Decree no. 677), which was adopted on 6 February 2018 and published in the Official Gazette on 8 March 2018.

Constitutional Court's decision on the implementation of Article 4 of Legislative Decree no. 677

13. On 23 May 2018 the Constitutional Court delivered a decision concerning an individual application (case of *Mehmet Ali Eneze*, application no. 2017/35352). Mr Eneze was serving a sentence imposed for membership of the terrorist organisation Hizbullah, and had enrolled on Istanbul University's distance-learning programme. He had requested authorisation to sit the university exams, but this had been refused on the basis of Article 4 of Legislative Decree no. 677.

14. In its decision the Constitutional Court set out, in detail, the Court's case-law with regard to prisoners' right to education. It then examined the circumstances of the case before it, and held that Mr Eneze's inability to sit his university examinations indeed amounted to an interference with his right to education. It noted that the interference in question was based on Article 4 of Legislative Decree no. 677, which had been incorporated into Law no. 7083. With regard to the legitimate aim pursued, it specified that the Constitution did not contain an exhaustive list of the legitimate aims that could be relied on as justification for a restriction of the right to education. It indicated that the State, in compliance with the general principles set out in Article 13 of the Constitution, enjoyed a wide margin of appreciation in assessing what could constitute a legitimate aim. It considered that the fact

of depriving the applicant, who was detained in connection with a terrorist offence, of the possibility of sitting examinations for the duration of the state of emergency, in order that discipline and security could be guaranteed in prisons, effectively pursued a legitimate aim.

15. The Constitutional Court then examined whether the impugned interference had been necessary in a democratic society and whether it had been proportionate. It reiterated that the right to education was protected by the Constitution, and it stressed the specific nature and importance of education as a public service. It added that the right to education was subject, by its nature, to regulation and that the State enjoyed a certain margin of appreciation in this area, which would have been all the wider given that the level of education in question was high.

16. The Constitutional Court also emphasised the need to take account of the natural and inevitable consequences of imprisonment. It noted that, although prisoners continued to enjoy, in a general way, fundamental rights and freedoms, it could not be considered that their rights and freedoms were as wide as those of persons living freely outside prisons. In consequence, it considered that their rights and freedoms could be restricted in the context of the functioning of prisons, and that those considerations were also valid with regard to the right to education.

17. In addition, the Constitutional Court held that, in order to explain the ban imposed by Article 4 of the Legislative Decree, it was necessary to provide certain information with regard to the attempted *coup d'état* and subsequent developments. Thus, it explained that, following the attempted *coup*, judicial investigations had been opened in respect of numerous individuals who were accused of being members of the FETÖ organisation or of having links to it; in the context of these investigations, many civil servants – largely members of the armed forces, the police and the justice system – and civilians had been arrested and placed in police custody; subsequently, many of those persons had been placed in pre-trial detention; lastly, a number of prison officers and gendarmerie personnel responsible for ensuring the safety and protection of prisoners, as well as a significant proportion of the police officers who could have been assigned to protect detainees if necessary, had been dismissed or suspended because of their links with terrorist organisations.

18. The Constitutional Court further indicated that a restriction had been imposed on Mr Eneze on the basis of the offence with which he was charged, and that the aim of this restriction had been to ensure discipline and security within the prison, by avoiding a situation where persons who had been detained or convicted in connection with terrorist offences were able to assemble. It accepted the need to prevent those prisoners, or prisoners who represented a threat to discipline, from participating collectively in certain activities. Having regard to the organisational complexity and expense of running educational activities, the high number

of detainees and convicts with a link to terrorist offences following the attempted *coup d'état* and the significant reduction in the number of staff responsible for prisoners' security and protection, the Constitutional Court considered that it could not be claimed that the disputed interference had not been necessary in a democratic society.

19. The Constitutional Court added that it was appropriate, when assessing the measure's proportionality, to have regard to the fact that the restriction in question had been in force only for the duration of the state of emergency and imprisonment. Furthermore, considering that Mr Eneze had not alleged that the degree validating the teaching programme he was following had to be obtained within a given period of time, it held in consequence that the restriction placed on the possibility of following a course of distance learning, in order to ensure security and discipline in prisons, had been proportionate. It concluded, accordingly, that Mr Eneze's complaint, alleging a breach of his right to education, was manifestly unfounded and that his individual application should be declared inadmissible.

COMPLAINT

20. Relying on Article 2 of Protocol No. 1 to the Convention, the applicant alleged that the fact that he had been prevented from sitting his university examinations as a result of the ban imposed by Legislative Decree no. 677 had breached his right to education.

THE LAW

21. The applicant alleged that the inability to sit his university examinations on account of the prohibition imposed by Legislative Decree no. 677 had entailed a violation of Article 2 of Protocol No. 1 to the Convention, which reads as follows:

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

22. The Government considered that the applicant did not have victim status, in that, after the lifting of the state of emergency, he had been authorised to sit his university examinations.

23. On the merits, the Government invited the Court to dismiss the application as manifestly unfounded. Relying on the Court's case-law and the arguments put forward by the Constitutional Court, they submitted that

the contested restriction pursued the legitimate aim of ensuring security and discipline in prisons, and that it had been necessary in a democratic society and proportionate. In the Government's view, in assessing the measure's proportionality it was necessary to have regard to the situation in prisons and the fact that the contested restriction had been limited in time, namely for the duration of the state of emergency. They added that the applicant had not been obliged to comply with a given time-limit in order to obtain his degree in the context of the distance-learning programme. Lastly, the Government noted that after the state of emergency was lifted the applicant had renewed his university enrolment, resumed his studies and been authorised to sit his examinations.

24. The Court notes that throughout the entire period in which the state of emergency remained in force the applicant was unable to sit his university examinations. He was personally and directly affected by the situation of which he complains to the Court. In the absence of any acknowledgment by the national authorities of a violation of the applicant's right to education and of compensation, he may still claim to be a "victim" of the alleged violation. The fact that the applicant is once again able to sit these examinations does not by any means represent a remedy for the alleged violation and cannot deprive the applicant of his status as "victim". It follows that the Government's objection in this connection must be dismissed.

25. The Court reiterates that the general principles concerning prisoners' right to education were set out in the case of *Velyo Velev v. Bulgaria* (no. 16032/07, §§ 30-33, ECHR 2014 (extracts)). These principles read as follows:

> "30. The Court would begin by emphasising 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 expressly 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 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, the right to respect for correspondence 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, and the cases cited therein; see also *Stummer v. Austria* [GC], no. 37452/02, § 99, ECHR 2011). In *Hirst* (cited above, § 70) the Court stated that "[t]here is no question ... that a prisoner forfeits his Convention rights merely because of his status as a person detained following conviction". This principle applies a fortiori in respect of a person such as the applicant during the period in question, who has not been convicted and who must, therefore, be presumed innocent (see, for example, *Laduna v. Slovakia*, no. 31827/02, §§ 64 and 67, ECHR 2011).

31. As regards the right to education, while Article 2 of Protocol No. 1 cannot be interpreted as imposing a duty on the Contracting State 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"* (merits), 23 July 1968, pp. 7-8, §§ 3-4, Series A no. 6; *Ponomaryovi v. Bulgaria*, no.5335/05, § 49, ECHR 2011; and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos.43370/04, 8252/05 and 18454/06, § 137, ECHR 2012). This provision applies to primary, secondary and higher levels of education (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 134 and 136, ECHR 2005-XI).

32. The Court however 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 *Catan and Others*, cited above, § 140, and the cases cited therein).

33. 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..." (see, *mutatis mutandis*, *Ponomaryovi*, cited above, § 55).

34. ... 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."

26. The Court must first ascertain whether the restriction applied was justified under the Article 2 of Protocol No. 1. If it was justified under that provision, it will not be necessary to determine whether or not the derogation was valid (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 161, ECHR 2009).

27. In the present case, the Court notes that the applicant's complaint concerns the fact that he was unable, from the prison in which he was

detained, to follow a pre-existing educational programme, namely a university course via distance-learning, validated by examinations. As noted above, the right of access to pre-existing educational institutions falls within the scope of Article 2 of Protocol No. 1 to the Convention. It is not disputed between the parties that the ban on the applicant being able to sit his university exams represented an interference with his right to education as guaranteed by Article 2 of Protocol No. 1. It must now be ascertained whether that interference had a legal basis, pursued a legitimate aim and was proportionate.

28. The Court notes that the impugned restriction had a legal basis, namely Article 4 of Legislative Decree no. 677, incorporated in section 4 of Law no. 7083. It has also recognised that the justification for restrictions on prisoners' rights and freedoms may be found in the considerations of security, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of imprisonment (see, *inter alia*, *Hirst*, cited above, § 69). In the present case, it notes that the Turkish Constitutional Court, in examining the individual application lodged by the applicant, found that the restriction affecting him pursued the legitimate aim of maintaining discipline and security within the prison in which he was being held. The Court sees no reason to disagree with these findings, and it therefore accepts that the contested restriction pursued the legitimate aims of maintaining order and security in prisons.

29. In seeking to establish whether, in the present case, the interference with the applicant's right to education was "necessary", the Court will have regard to the normal and reasonable requirements of detention and to the breadth of the margin of appreciation afforded to the national authorities in regulating prisoners' access to education.

30. It notes that Article 4 of Legislative Decree no. 677, incorporated in section 4 of Law no. 7083, prohibited, for the duration of the state of emergency, individuals who were detained or serving prison sentences related to terrorist offences from sitting examinations. The Court reiterates in this connection that the application of a restriction on prisoners' rights without any *ad hoc* judicial decision does not, in itself, give rise to a violation of Article 2 of Protocol No. 1 (see *Scoppola v. Italy (no. 3)* [GC], no. 126/05, § 104, 22 May 2012). The impugned measure must also be found to be disproportionate – in terms of the manner in which it is applied and the legal framework surrounding it – to the legitimate aims pursued.

31. The Court notes at the outset that the restriction in the present case was a temporary one, which lasted just under two years. The provision in question imposed a restriction solely for the duration of the state of emergency. As the state of emergency was lifted on 18 July 2018, the restriction in question ceased to apply on that date and the applicant was authorised to sit his examinations.

32. The Court further considers it appropriate to have regard to the scope of the prohibition in issue. It notes that although the restriction applied automatically, it was not a general prohibition imposed on all detainees and convicted prisoners, irrespective of the nature of the offence with which they had been charged. The restriction complained of concerned only one specific category of prisoners, namely those who had been detained or convicted in respect of terrorist offences. In this respect, the present case is to be distinguished from cases concerning prohibitions which affect a group of people generally, automatically and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of their individual circumstances (see, *a contrario, Hirst*, cited above). In the Court's view, Article 4 of Legislative Decree no. 677, subsequently incorporated in section 4 of Law no. 7083, indicates that the legislature had made the application of the measure conditional on the nature of the offence committed (see *Scoppola*, cited above, § 106).

33. The Court also notes that the contested restriction was reviewed by the Constitutional Court in the context of numerous individual applications, including that of the applicant, and in particular in its leading case *Eneze* (see paragraphs 13-19 above, to which the Constitutional Court referred in its decision in the applicant's case). The Constitutional Court carefully examined the compatibility of this measure with the Constitution and the Convention. To that end, it broadly based its analysis on the principles laid down by the Court in its case-law and examined the proportionality of the contested interference in the light of the criteria established by its case-law (see, *a contrario*, *Mehmet Reşit Arslan and Orhan Bingöl v. Turkey*, nos. 47121/06 and 2 others, § 69, 18 June 2019); it provided an explanation in its decision, with extended reasoning. Although the Constitutional Court's reasoning does not show that the applicant's personal situation was specifically taken into account, this may be accepted in the light of the background to the adoption of the restriction in question. It thus took into consideration the sudden and exponential increase, after the attempted *coup d'état*, of the number of persons placed in detention on terrorism-related grounds, an increase which was accompanied by a decrease in the numbers of prison staff responsible for supervising prisoners. The Court recognizes that the extraordinary situation with a significant increase in the number of detainees and a decrease in the number of prison guards may have rendered it difficult in practice to organize participation of the applicant and other detainees in educational programmes they were enrolled in.

34. In the Court's view, these are relevant and acceptable considerations, including with regard to the applicant's personal circumstances, which follow logically from the principle that the 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. The Court reiterates that the Convention lays down no specific obligations

concerning the extent of these means of instruction and the manner of their organisation (see, *inter alia*, *Georgiou v. Greece* (dec.), no. 45138/98, 13 January 2000).

35. The Court further notes, as the Constitutional Court also pointed out, that the contested restriction must be assessed in the context of higher education (see *Tarantino and Others v. Italy*, nos. 25851/09 and 2 Others, § 50, ECHR 2013 (extracts)). It reiterates that the State's margin of appreciation in this domain increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large (see *Ponomaryovi v. Bulgaria*, no. 5335/05, § 56, ECHR 2011).

36. Lastly, it has not been established that this period of restriction constituted a significant obstacle to the applicant's ability to complete his studies (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 128, ECHR 2002-II (extracts)). Nor has he alleged that he was obliged to complete his university studies within a given period of time. According to the materials in the Court's possession, the applicant was able to re-enroll in the university and sat his exams. He continues his studies, apparently without any further hindrance. In addition, the applicant has not provided information on his employment status or his occupation prior to his incarceration.

37. Accordingly, the Court sees no reason to depart from the findings of the Constitutional Court. It considers that the contested restriction was neither arbitrary nor unreasonable, and that it was necessary and proportionate. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

38. As the measure taken can be justified under Article 2 of Protocol No. 1, the Court is not required to determine whether the derogation was valid.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 December 2020.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President