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

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By denying the use of a computer and Internet access to two prisoners, the Turkish authorities breached the Convention right to education

In today's **Chamber** judgment[1] in the case of **Mehmet Reşit Arslan and Orhan Bingöl v. Turkey** (application no. 47121/06) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the right to education of two convicted prisoners.

Having been sentenced to life imprisonment and wishing to continue their higher-education studies, which had been interrupted by their conviction, the applicants had asked the prison authorities to allow them to use a computer and access the Internet. Their requests were denied. They appealed to the courts but were unsuccessful.

Having examined the circumstances, the Court found that the domestic courts had failed to weigh up the applicants' interests on the one hand and the imperatives of public order on the other.

Principal facts

The applicants, Mr Mehmet Reşit Arslan and Mr Orhan Bingöl, are two Turkish nationals who were born in 1966 and 1973. Mr Arslan and Mr Bingöl were convicted in 1992 and 1995, respectively, for membership of an illegal armed organisation. They are both serving sentences of life imprisonment.

On 13 March 2006 Mr Arslan requested the İzmir Prison authorities to allow him to use a computer and have Internet access as provided for, subject to certain conditions, by Law no. 5275 on the execution of sentences. The prison's management and supervisory board issued an unfavourable opinion on the grounds that Mr Arslan maintained links inside the prison with other inmates belonging to the same illegal organisation and that he had not enrolled in any training course. The prison authorities endorsed that opinion and denied his request.

On 3 April 2006 Mr Arslan applied to the İzmir post-sentencing judge, stating that prior to his conviction he had been a final-year medical student and that he wished to have access to audiovisual materials in order to pursue his higher-education studies. Failing that, he offered to pay for the necessary equipment from his own funds. The judge rejected the application. Mr Arslan applied to have that decision set aside but the İzmir Assize Court dismissed his application on the grounds that the post-sentencing judge's decision had not been in breach of the procedure or the law. While in detention in İzmir F-type Prison, Mr Arslan acquired an electronic device through the prison authorities which included a calculator function and an English-Turkish translation tool, and was given permission to use it in his cell. After he was transferred to a different prison in Bolu, the device was placed in safe keeping and his request to have it returned was refused on the grounds that it did not feature on the list of permitted items. Mr Arslan brought court actions which were dismissed. After being transferred to Bolu high-security prison, he requested permission from the

1. 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.

prison authorities to purchase and use a computer. The authorities refused the request. The applicant appealed to the courts without success.

On 1 August 2006 Mr Bingöl requested permission from the prison authorities to use a computer and have access to the Internet. The deputy director of the prisons directorate at the Ministry of Justice refused the request. Mr Bingöl appealed to the post-sentencing judge against the refusal. His appeal was dismissed, and an application to have that decision set aside was rejected by the Kocaeli Assize Court.

Complaints, procedure and composition of the Court

Relying on Article 2 of Protocol No. 1 (right to education) to the Convention, the applicants complained of being prevented from using a computer and accessing the Internet. They submitted that these resources were essential in order for them to continue their higher education and improve their general knowledge. Relying on Article 6 (right to a fair hearing), Mr Arslan also complained of the lack of a hearing in the proceedings before the domestic courts.

The application was lodged with the European Court of Human Rights on 19 October 2006.

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

Robert **Spano** (Iceland), *President*,
Marko **Bošnjak** (Slovenia),
Işıl **Karakaş** (Turkey),
Valeriu **Griţco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Ivana **Jelić** (Montenegro),
Darian **Pavli** (Albania),

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 2 of Protocol No. 1 to the Convention

The Court observed that domestic law afforded prisoners the possibility of using a computer and having access to the Internet under certain conditions. Turkish legislation did not impose a blanket ban on the use of a computer or Internet access. Section 67 (3) of Law no. 5275 provided that prisoners could use audiovisual training tools and computers, with supervised Internet access in specific rooms and in the context of rehabilitation or training courses.

The Court noted that the domestic authorities had relied on various reasons to justify the denial of the applicants' requests. The request submitted by Mr Arslan had been denied on the basis of the prison authorities' opinion that he had maintained relations with other prisoners who were members of the same illegal organisation and had not enrolled in any training. Mr Bingöl had not enrolled either and he had also been disciplined on numerous occasions.

The Court found it noteworthy that both applicants wished to pursue their higher education. They had both taken part in 2006 in the entrance examinations for an institute of higher education and had shown a great interest in pursuing their studies that had been interrupted as a result of their final conviction.

The Court reiterated that the importance of education in prison had been acknowledged by the Committee of Ministers in its recommendations on education in prison and in its European Prison Rules. While the security considerations raised by the national authorities and the Government

could be regarded as pertinent in the present case, the Court observed that the national courts had not carried out any detailed analysis of the security risks. In addition, they had not duly weighed up the various interests at stake and had failed in their duty to prevent any abuse of power by the administration. In those circumstances, the Court was not persuaded by the grounds put forward to justify the authorities' denial of the requests by Mr Arslan and Mr Bingöl to use audiovisual materials and computers and to have Internet access.

The Court concluded that the domestic courts had failed to strike a fair balance between the applicants' right to education under Article 2 of Protocol No. 1 on the one hand and the imperatives of public order on the other. It found that there had been a violation of that Article in respect of both applicants.

Article 6 § 1

Having regard to the reasoning which led it to finding a violation of Article 2 of Protocol No. 1 and finding that it had already examined the main legal question in the present case, the Court took the view that it did not need to examine the admissibility or merits of this complaint.

Just satisfaction (Article 41)

Mr Arslan had not made any claim by way of just satisfaction. The Court held that no circumstances warranted awarding him any sum on that basis. In Mr Bingöl's case, it found that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained.

The judgment is available only in French.

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