COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 9 January 2025 PC-CP (2025) 2

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COUNCIL FOR PENOLOGICAL CO-OPERATION
(PC-CP)

Analysis of prison education case law of the European Court of Human Rights

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Cases considered
MEHMET REŞIT ARSLAN AND ORHAN BİNGÖL v. TURKEY, nos. 47121/06, 13988/07 and 34750/07, 18 June 2019
Second section decision as to the admissibility of Application no. 37866/18 by Hüseyin UZUN against TURKEY, 10 November 2020
MATIOŠAITIS AND OTHERS v. LITHUANIA, nos. 22662/13, 51059/13, 58823/13, 59692/13, 59700/13, 60115/13, 69425/13 and 72824/13), 23 August 2017
VELYO VELEV v. BULGARIA, no. 16032/07, 27 August 2014
PONOMARYOVI v. BULGARIA, no. 5335/05, 21 June 2011
CATAN AND OTHERS v. MOLDOVA AND RUSSIA, nos. 43370/04, 8252/05 and 18454/06, 19 October 2012
LEYLA ŞAHİN v. TURKEY, no. 44774/98, 10 November 2005
JANKOVSKIS v. LITHUANIA, no. 21575/08, 17 January 2017
Second section decision as to the admissibility of Application no. 45138/98 by Marios GEORGIOU against Greece, 13 January 2000
EPISTATU v. ROMANIA, no. 29343/10, 24 December 2013

This document contains an analysis of case law of the European Court of Human Rights ('the Court') relating to education in prisons. This analysis has been undertaken to support the update of Recommendation (89)12 of the Committee of Ministers to member States on education in prison.

The importance of education

The Court has repeatedly recognised the importance of the right to education in its case law. The Court has said that "in a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays…a fundamental role" (Velyo Velev at 33, Ponomrayovi at 55, citing Leyla Sahin at 137). It has acknowledged that education is a type of public service that "not only directly benefits those using it but also serves broader societal functions" (Velyo Velev at 33, Mehmet Resit at 56-57). Both the 1989 Recommendation on education in prison and the European Prison Rules, have been referred to by the Court in its case law to emphasise the universally recognised "value of providing education in prison, both in respect of the individual prisoner and the prison environment and society as a whole" (Mehmet Resit at 69, Velyo Velev at 41).

The right to education under Article 2 of Protocol No. 1

In case law of the European Court of Human Rights ('the Court'), complaints from prisoners relating to education have primarily been considered under Article 2 of Protocol No.1 to the European Convention on Human Rights, which sets out that "No person shall be denied the right to education…". The Court has expressly acknowledged that this provision applies to primary, secondary and higher levels of education (Velyov Velev at 31, citing Leyla Sahin v Turkey at 134-6).

The Court has acknowledged that the Committee of Ministers, through both the European Prison Rules and the 1989 Recommendation on education in prison (Velyo Velev at 21-24), has recommended that "educational facilities should be made available to all prisoners". This echoes the sentiment of the revised Rule 1 in the draft updated Recommendation on education in prison. The Court has sought to distinguish this position from the position under Article 2 of Protocol No.1, which provides a negative right to education: in other words, while it does not oblige member States to "provide education in prison in all circumstances, where such a possibility is available it should not be subject to arbitrary and unreasonable restrictions" (Velyo Velev at 34).

The Court has therefore stated that although Article 2 of Protocol No. 1 does not oblige member States to "set up or subsidise particular educational establishments", or to "set up *ad hoc* courses" for prisoners (Epistatu v

Romania at 63), member States doing so "will be under an obligation to afford effective access to them" (Mehmet Resit at 51; Velyo Velev at 31). In practice this means that an "inherent part" of prisoners' right to education is access to educational programmes or opportunities that are in existence within the prison at that particular time (Mehmet Resit at 51; Velyo Velev at 31). In other words, while prisoners are not entitled to insist on the development of a new educational opportunity using Article 2 of Protocol No.1, they do have the right to request access to existing opportunities.

Cases which the Court has found to be in scope of Article 2 of Protocol No.1 have included where a remand prisoner was denied access to a secondary education school operating inside the prison (Velyo Velev) and the denial of access to computers in a supervised prison room to prepare for admission to university (Mehmet Resit). Conversely, the Court has found that the denial of a prisoner's request to undertake high school education that the prison did not have the resources to provide (Epistatu v Romania) and a prisoner's inability to continue external university education and sit exams during a fourteen month period of detention (Georgiou v Greece) were not admissible under Article 2 of Protocol No. 1. The right for prisoners to access existing educational opportunities should also not be interpreted as an obligation for prisoners to attend them; in *Koureas and Others v. Greece*, the Court found no interference with the right to education when a prisoner voluntarily stopped attending classes in a prison school.

Limitations on the right to education

The Court has recognised that "in spite of its importance, the right to education is not absolute, but may be subject to limitations" (Velyo Velev at 32). Centred in this justification is the recognition that member States must strike a balance between educational needs of those under their jurisdiction and their own limited capacity to accommodate these needs. The Court has recognised in a prison context that education is "an activity that is complex to organise and expensive to run" (Velyo Velev, paragraph 33).

Such limitations must be foreseeable for those concerned, pursue a legitimate aim, and be proportionate to that aim (Mehmet Resit at 56, Velyo Velev at 32). Unlike with other Convention rights, there is no exhaustive list of legitimate aims which member States may apply, though in a prison context the Court has acknowledged preventing disorder and crime as such a legitimate aim (Leyla Sahin v Turkey at 154; Mehmet Resit at 56, 60). As stated above, however, any limitations must still be proportionate to this aim, and foreseeable for the prisoners concerned. The Court has found that the denial of a remand prisoner's access to educational programmes were unforeseeable in the absence of any express limitation on remand prisoners in law (Velyo Velev at 35).

The Court has also found that time-limited restrictions applied to a specific section of prisoners (those convicted of terrorist offences) during a state of emergency were proportionate to the legitimate aim of ensuring security and discipline in prisons, meaning that a prisoner's right to education was not breached when he was unable to sit his university examinations during this state of emergency (Uzun at 32). Cases where restrictions "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" are much less likely to be proportionate (Uzun at 32). The Court has also found that the uncertain length of pre-trial detention (except where it is clear it will be of short duration) and seeking to avoid mixing convicted and remand prisoners are not appropriate justifications for denying remand prisoners access to educational programmes (Velyo Velev at 39).

The Court has also recognised that member States enjoy a margin of appreciation in this sphere (Velyo Velev at 32, Mehmet Resit at 32), within which the "manner and means of regulating the mode of access" to educational facilities falls (Mehmet Resit at 64). The breadth of this margin of appreciation increases with the level of education, "in inverse proportion to the importance of that education for those concerned and for society at large" (Ponomaryovi v Bulgaria at 56, Uzun at 35).

Internet access: Article 10

In cases where denial of access to education has involved a denial of internet access, the Court has also applied its case law developed under Article 10 of the Convention relating to the right of prisoners to internet access (Mehmet Resit at 59, see *Kalda and Jankovskis)*. While the Court has found that "Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners" (Mehmet Resit at 59), the Court has found a breach of Article 10 when a prisoner was denied access to the internet to read a website providing information on options for university degrees. Such an interference with Article 10 served the legitimate aim of protecting the rights of others and preventing disorder and crime but was not necessary in a democratic society (Jankovskis).