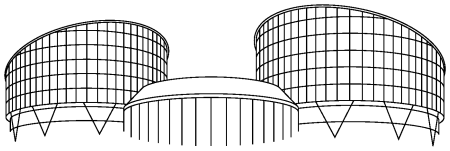

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF VELYO VELEV v. BULGARIA

(Application no. 16032/07)

JUDGMENT

STRASBOURG

27 May 2014

FINAL

27/08/2014

This judgment has become final under Article 44 § 2 of the Convention.

In the case of Velyo Velev v. Bulgaria,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 6 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 16032/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Velyo Nikolaev Velev ("the applicant"), on 5 March 2007.

2. The applicant was represented by Ms E. Syarova, a lawyer practising in Stara Zagora. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that he was not allowed to pursue his education while in Stara Zagora Prison, in breach of Article 2 of Protocol No. 1, and that he was treated as a "recidivist" prior to a final conviction in his case, in breach of Article 6 § 2 of the Convention.

4. On 14 December 2010 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Stara Zagora. In 2003 he was convicted of a fraud offence and served a sentence of imprisonment in Stara Zagora Prison from 11 February 2003 to 9 August 2004. On 1 October 2004 he was arrested on suspicion of unlawful possession of firearms. Between 29 November 2004 and 20 April 2007 he was detained on remand

in Stara Zagora Prison, where he claimed to have been detained with "recidivist" prisoners (see paragraph 20 below).

6. As he had never finished his secondary education, the applicant requested to be enrolled in the school operating inside Stara Zagora Prison. In August 2005 he submitted a written request to the governor of the Stara Zagora Prison, asking to be enrolled for the 2005/06 school year. He received no reply before the school year began on 15 September 2005, so he wrote again to the governor on 29 September 2005 and also to the Ministry of Education and the Prosecutor's Office (in Bulgaria, the Prosecutor is the authority competent to oversee the lawful execution of pre-trial and post-conviction detention). The applicant received a letter from the Prosecutor, dated 6 October 2005, which said that the prison administration had taken due account of the possibility for the applicant to study, in view of his previous sentence. The Prosecutor further stated that the applicant's assertion regarding refused access to education had not been confirmed. The applicant also received a reply, dated 24 October 2005, from the Ministry of Education. The letter stated that individuals deprived of their liberty (*лишени от свобода*) were entitled to continue their education in prison and made no specific reference to remand prisoners.

7. In the meantime, on 19 October 2005 the applicant sent another request to the prison governor, the Ministry of Education and the Appellate Prosecutor. On 26 October 2005 the applicant filed a new request with the prison governor, again asking to be enrolled in the prison school for the 2005/06 school year. Referring to the letter of 24 October 2005, the applicant argued that the Ministry of Education had recognised his right to access to education in prison. On 7 December 2005 he received a reply signed by the Head of the Execution of Punishments Directorate of the Ministry of Justice, rejecting his request. The letter stated, *inter alia*:

> "It was established that [the applicant] has not yet been convicted. Once convicted, he is to be transferred to a prison for recidivists.
>
> The inclusion of recidivists in the educational and work programmes in a prison for non-recidivists would lead to a breach of the requirement that different categories of inmates are to be kept apart and are to participate separately in correctional programmes ..."

8. On 21 December 2005 the applicant appealed against the refusal to enrol him in the school, claiming that in the absence of a second sentence of imprisonment he could not be treated as a "recidivist". In his written pleadings he relied explicitly on the right to education as guaranteed by Article 53 of the Constitution and by Article 2 of Protocol No. 1 to the Convention, as well as on Rule 77 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, which provided, *inter alia*, that "[p]rovision shall be made for the further education of all prisoners capable of profiting thereby". In the applicant's opinion the Execution of Punishments Act 1969 (see paragraphs 15-18 below) imposed the same

obligation on the authorities to provide access to education to prisoners detained on remand as the obligation to provide such access to sentenced prisoners. The refusal pursued no legitimate aim and was contrary to the National Education Act 1991 and the United Nations Convention against Discrimination in Education (published in the Official Gazette in 1963). During the hearing he indicated that other persons in his situation were allowed to study and that the prison authorities had not shown any legal ground for their refusal. The prison governor admitted that there had previously been a practice of providing access to the school, but that this had been discontinued because of concerns about the influence of "recidivists" on "non-recidivists". The applicant had been refused access as he was to be treated as a "recidivist" within the meaning of the Execution of Punishments Act 1969 (see paragraph 20 below) and could not attend the school because this would bring him into contact with non-recidivists.

9. In a judgment of 24 March 2006, the Stara Zagora Regional Court allowed the applicant's appeal and ordered the governor to include him in the prison's educational programme. It found, in particular, that the refusal of the prison governor was based on the assumption that the applicant was a "recidivist" and that since the Stara Zagora Prison was a prison for "non-recidivists", it was the duty of the prison administration to exclude him from programmes involving other inmates, most of whom were "non-recidivists". The court held that the applicant could not be considered a "recidivist", as defined by section 158 of the Execution of Punishments Act because, although he had previously received a sentence of imprisonment, the current set of proceedings against him were still pending and he had not yet been convicted and sentenced a second time. The rule requiring that "recidivists" be kept separately from "non-recidivists" in prison was, therefore, inapplicable.

10. The prison governor appealed against that judgment. He argued that, in accordance with the principle for differentiated treatment of the various categories of prisoner, the applicant was accommodated in the group of those remand prisoners who, if convicted, would fall within the category of "recidivists". Moreover, the Stara Zagora Prison was a prison for "non-recidivists" and the accommodation of "recidivists", including remand prisoners treated as such, was exceptional.

11. Before the examination of the appeal, on 9 August 2006 the applicant requested the governor to enrol him in the prison school for the new school year, starting 15 September 2006. As he received no reply to his request, on 21 September 2006 he filed a similar request with the Execution of Punishments Directorate of the Ministry of Justice.

12. On 26 September 2006 the Supreme Administrative Court gave a final judgment in respect of the applicant's complaint about exclusion from the school. Before the Supreme Administrative Court, the prosecutor (who intervenes in all Supreme Court proceedings) was of the view that the

decision of the Stara Zagora Regional Court was correct and that the prison governor's appeal should be dismissed. The prosecutor further expressed the view that the grounds for the cassation appeal were unclear and based on an incorrect interpretation of the applicable law, contrary to the correct interpretation given by the first-instance court in the decision appealed against. In its decision the Supreme Court noted that before the 2002 amendments, the Execution of Punishments Act imposed an obligation for the mandatory education of all prisoners under 40 years of age. The current provision envisaged mandatory education only for persons under the age of 16; for those aged 16 and over there was an obligation on the State to make education available for prisoners who wished to take part. However, convicted prisoners had a right under domestic law to access education only where they had been sentenced to one year or more of imprisonment, to ensure that they would have the possibility of completing a school year (see paragraphs 15-19 below). The Supreme Court concluded:

> "[T]he right to education (whether mandatory or voluntary) is envisaged and regulated in the legislation of the Republic of Bulgaria solely in regard of persons deprived of liberty as a result of a final conviction [*лишаване от свобода*] and not in regard of those deprived of liberty pursuant to a measure of remand [*задържане под стража*]."

It followed that the question whether the prison authorities unlawfully considered the applicant to be a "recidivist" was irrelevant.

13. Referring to that judgment, on 6 November 2006 the Execution of Punishments Directorate replied to the applicant's requests of 9 August and 21 September 2006, informing him that he would not be enrolled in the prison school for the year 2006/07.

14. Subsequently, the applicant was convicted and sentenced to imprisonment in respect of the firearms offence. He was removed from Stara Zagora Prison on 20 April 2007 and transferred to Pazardjik Prison to serve his sentence. The Government informed the Court that the applicant did not file any requests to take part in educational activities while at that prison. However, in his observations to the Court, the applicant stated that he did not file a request because there was no school at Pazardjik Prison. In addition, he sent the Court documents which indicated that at least one prisoner considered a "recidivist" had participated successfully in the education programme at Stara Zagora Prison. The applicant was released from Pazardjik Prison on 27 July 2008.

II. RELEVANT DOMESTIC LAW

A. Prisoners' access to education

15. During the period in question, access by prisoners to education was governed by the Execution of Punishments Act 1969 (in force until June

2009 – "the 1969 Act"); the implementing regulations to the 1969 Act; Ordinance no. 2 of 19 April 1999 on the status of remand prisoners (in force until 2007 – "the Ordinance"); the National Education Act 1991 ("the 1991 Act"); and the implementing regulations to the 1991 Act. It should be noted that before 2002 the status of remand prisoners was regulated by ordinances issued by the Minister of Justice. In 2002 such rules were incorporated into the 1969 Act. It appears that the Ordinance continued to be operative until 2006 when the implementing regulations to the 1969 Act were supplemented with provisions regulating in more detail the status of remand prisoners.

16. Before 2002 education in prison was mandatory for prisoners under 40 years of age (section 39(1) of the 1969 Act) but only where they had been sentenced to one year or more of imprisonment (section 47(1) of the implementing regulations to the 1969 Act). Section 39(1) of the 1969 Act was repealed in 2002 but the provision in the implementing regulations remained operative.

17. The relevant provisions provided for three different regimes of access to education. Prisoners aged between 14 and 18, accommodated in "correctional houses" rather than prisons, were entitled to attend classes. Education was mandatory for prisoners aged 16 or under (see section 39(3) of the 1969 Act and section 7(1) of the 1991 Act). Older convicted prisoners were entitled to request inclusion in the educational programmes and the prison administration was duty-bound to provide such (section 39(4) of the 1969 Act and section 75(1) of the implementing regulations to the 1969 Act). At the time of admittance to the prison institution the prison authorities were required to make an assessment as to the individual needs of the prisoner as regards education (section 66a(1)(3) of the 1969 Act). Prisoners who were engaged in educational activities and did not work were entitled to have the time spent in school deducted from their overall sentence based on the same rules as working days (section 103(4) of the 1969 Act).

18. Section 128 of the 1969 Act stipulated that in the absence of other provisions, the provisions of the 1969 Act concerning convicted prisoners were applicable to prisoners detained on remand. A similar provision was contained in the implementing regulations to the 1969 Act (section 168).

19. The newly enacted Execution of Punishments and Pre-Trial Detention Act 2009 ("the 2009 Act") contained similar provisions. It stipulated that the inclusion in educational programmes of convicted prisoners under 16 years of age was mandatory (section 162(1) of the 2009 Act). The administration could provide educational programmes for prisoners above that age (section 162(2)). The inclusion of remand prisoners in educational programmes was "encouraged" (section 257(2)). Finally, the time spent in school was to be deducted from the overall sentence based on the same rules as those for working days (section 178(4)).

B. Recidivists

20. At the relevant time, section 158(1) of the 1969 Act provided that, for its purposes, "recidivists" would mean:

> "(a) persons who have been sentenced two or more times to imprisonment for intentional offences, which did not require one cumulative punishment ..., if they have actually served a sentence of imprisonment;
>
> (b) persons who have been convicted of an offence qualifying as dangerous recidivism."

Section 12 of the 1969 Act required that "recidivists" serve their sentences in separate institutions. Section 8a(3) provided that "correctional activities in respect of different categories of prisoners [would] be carried out separately". "Recidivists" within the meaning of that law could be transferred to other prisons only in exceptional cases if they had reformed and there was no danger of negatively influencing other prisoners (section 12(2) of the 1969 Act). Remand prisoners who had previously been sentenced to a term of imprisonment and were not rehabilitated were accommodated separately from other remand prisoners (section 130ϭ(1)(5) of the 1969 Act). The 2009 Act contains similar provisions.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

The European Prison Rules

21. The European Prison Rules are recommendations of the Committee of Ministers to member States of the Council of Europe as to the minimum standards to be applied in prisons. States are encouraged to be guided by the Rules in their legislation and policies, and to ensure wide dissemination of the Rules to their judicial authorities and to prison staff and inmates.

1. The 1987 European Prison Rules (Recommendation No. R (87) 3)

22. The 1987 European Prison Rules were adopted by the Committee of Ministers of the Council of Europe on 12 February 1987. They contained the following provisions, *inter alia,* in relation to untried prisoners:

> "11.1. In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.
>
> ...
>
> 3. In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organised activities beneficial to them.
>
> ...

91. Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners, who are presumed to be innocent until they are found guilty, shall be ... treated without restrictions other than those necessary for the penal procedure and the security of the institution.

...

96. Untried prisoners shall, whenever possible, be offered the opportunity to work but shall not be required to work. Those who choose to work shall be paid as other prisoners. If educational or trade training is available untried prisoners shall be encouraged to avail themselves of these opportunities."

2. Recommendation No. (89) 12 on education in prison

23. On 13 October 1989 the Committee of Ministers adopted its Recommendation on education in prison. The Preamble stated:

"Considering that the right to education is fundamental;

Considering the importance of education in the development of the individual and the community;

Realising in particular that a high proportion of prisoners have had very little successful educational experience, and therefore now have many educational needs;

Considering that education in prison helps to humanise prisons and to improve the conditions of detention;

Considering that education in prison is an important way of facilitating the return of the prisoner to the community;

Recognising that in the practical application of certain rights or measures, in accordance with the following recommendations, distinctions may be justified between convicted prisoners and prisoners remanded in custody;

Having regard to Recommendation No. R (87) 3 on the European Prison Rules and Recommendation No. R (81) 17 on adult education policy,

..."

The Recommendation continued as follows, *inter alia:*

"1. All prisoners shall have access to education, which is envisaged as consisting of classroom subjects, vocational education, creative and cultural activities, physical education and sports, social education and library facilities; ...

4. All those involved in the administration of the prison system and the management of prisons should facilitate and support education as much as possible; ...

6. Every effort should be made to encourage the prisoner to participate actively in all aspects of education; ...

17. The funds, equipment and teaching staff needed to enable prisoners to receive appropriate education should be made available."

3. Recommendation Rec(2006) 2 on the European Prison Rules

24. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted a new version of the European Prison Rules, noting that the

1987 Rules "need[ed] to be substantively revised and updated in order to reflect the developments which ha[d] occurred in penal policy, sentencing practice and the overall management of prisons in Europe". The 2006 Rules contain the following basic principles:

"Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty. ...

Scope and application

...

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

...

Allocation and accommodation

...

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

a. untried prisoners separately from sentenced prisoners;

b. male prisoners separately from females; and

c. young adult prisoners separately from older prisoners.

18.9 Exceptions can be made to the requirements for separate detention in terms of paragraph 8 in order to allow prisoners to participate jointly in organised activities, but these groups shall always be separated at night unless they consent to be detained together and the prison authorities judge that it would be in the best interest of all the prisoners concerned.

...

Education

28.1 Every prison shall seek to provide all prisoners with access to educational programmes which are as comprehensive as possible and which meet their individual needs while taking into account their aspirations.

28.2 Priority shall be given to prisoners with literacy and numeracy needs and those who lack basic or vocational education.

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.

28.4 Education shall have no less a status than work within the prison regime and prisoners shall not be disadvantaged financially or otherwise by taking part in education.

28.5 Every institution shall have a library for the use of all prisoners, adequately stocked with a wide range of both recreational and educational resources, books and other media.

28.6 Wherever possible, the prison library should be organised in co-operation with community library services.

28.7 As far as practicable, the education of prisoners shall:

a. be integrated with the educational and vocational training system of the country so that after their release they may continue their education and vocational training without difficulty; and

b. take place under the auspices of external educational institutions.

...

Untried prisoners

...

Approach regarding untried prisoners

95.1 The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

95.3 In dealing with untried prisoners prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

...

Access to the regime for sentenced prisoners

101. If an untried prisoner requests to be allowed to follow the regime for sentenced prisoners, the prison authorities shall as far as possible accede to this request."

THE LAW

I. ADMISSIBILITY

25. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

II. THE MERITS

A. Alleged violation of Article 2 of Protocol No. 1

26. The applicant complained that he was denied access to the school in Stara Zagora Prison, in breach of Article 13 of the Convention and Article 2 of Protocol No. 1. The Court considers that this complaint falls to be examined under Article 2 of Protocol No. 1, 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."

1. The parties' submissions

27. The applicant argued that the domestic legislation did not explicitly prohibit prisoners detained on remand from taking part in the prison's educational programme and that therefore he should have been treated in the same manner as convicted prisoners and allowed access to education. In particular, in his view, the provisions regarding access to educational facilities by convicted prisoners should have been applied to all detainees. In his submission, the domestic authorities construed the relevant provisions wrongly and as a result treated him in a discriminatory manner, restricted his rights more than was necessary for the purposes of his detention, and automatically and arbitrarily deprived him of his right to education.

28. The applicant also objected to the ground relied on by the prison authorities and by the Government in their observations, namely that as a person likely to be sentenced as a "recidivist", it was justifiable to exclude him from the school in the interests of the "non-recidivists" who attended it. He pointed out that during the period he was detained at Stara Zagora there were convicted prisoners classified as "recidivists" who attended the prison school. In his submission, this demonstrated that the principle of separating "recidivists" from other prisoners had not been respected. Furthermore, the applicant reasoned that it was illogical to exclude him from the school on the ground that, as an unconvicted prisoner, there was a chance that he would be acquitted and have to leave before the completion of the school year. In the event, he spent almost two full school years in pre-trial detention at Stara Zagora Prison. Had the prison authorities had any doubt concerning the duration of his detention on remand, they could have made inquiries of the Prosecutor's Office. The applicant contended that, until convicted, he was entitled to the presumption of innocence and should not have been denied his right to education during this period. Once he was convicted, and moved to Pazardjik Prison, he was unable to pursue his education because there was no school at that prison.

29. The Government contended that, in accordance with the Court's case-law, it was for the domestic authorities to regulate and plan educational facilities in their country. The decision by the prison authorities to exclude the applicant from the prison school was reasonable, given the need to apply different standards and conditions in relation to different categories of prisoner. The applicant's detention at Stara Zagora Prison, an open prison designed primarily for "non-recidivist" convicted prisoners, was exceptional and, at the time, it was unclear how long he would continue to be detained there. Firstly, the Government argued that as a remand prisoner it was not appropriate that the applicant should attend school with convicted prisoners. Moreover, under the provisions of the Execution of Punishments Act as applicable at the time, remand prisoners were not allowed to enrol in prison school unless it was certain that they would remain at the prison for at least one school year. Secondly, as a remand prisoner who risked being sentenced as a "recidivist" following conviction, it was appropriate that the rules on "recidivist" prisoners should be applied to him (see paragraph 20 above). If this were not so, the prison authorities would not be able fully to protect "non-recidivist" prisoners from contact with "recidivists". In addition, a relaxation of the rules applying to "recidivists" would weaken the deterrent effect of imprisonment. Had the applicant subsequently been acquitted, he would immediately have been released and his exclusion from the prison school would have ceased to affect him. Finally, the Government emphasised that, following his transfer to the prison in the town of Pazardzhik, the applicant did not submit a request to take part in the educational activities there.

2. The Court's assessment

(a) General principles

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).

(b) Application of these principles to the facts of the present case

34. While the Court is aware of the recommendations of the Committee of Ministers to the effect that educational facilities should be made available to all prisoners (see paragraphs 21-24 above), it reiterates that Article 2 of Protocol No. 1 does not place an obligation on Contracting States to organise educational facilities for prisoners where such facilities are not already in place (see *Natoli v. Italy*, no. 26161/95, Commission decision of 18 May 1998, unreported, and *Epistatu v. Romania*, no. 29343/10, § 63, 24 September 2013). However, the present applicant's complaint concerns the refusal to him of access to a pre-existing educational institution, namely the Stara Zagora Prison school. As noted above, the right of access to pre-existing educational institutions falls within the scope of Article 2 of Protocol No. 1. Any limitation on this right has, therefore, to be foreseeable, to pursue a legitimate aim and to be proportionate to that aim (see paragraph 32 above). 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.

35. The Court finds it open to doubt whether the restriction on the applicant was sufficiently foreseeable for the purposes of Article 2 of Protocol No. 1. The relevant legislative framework provided that convicted prisoners aged 16 or older had a right, on request, to be included in educational programmes and that, in the absence of clear rules to the contrary, the provisions regarding convicted prisoners were to apply equally to remand prisoners. The only express provision 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 (see paragraphs 15-19 above).

36. The lack of clarity in the statutory framework was reflected in the fact that during the domestic proceedings and the proceedings before this Court, varied reasons were given by the national authorities for refusing the applicant's request to enrol in the school. His request was refused by the Execution of Punishments Directorate of the Ministry of Justice on the ground that "once convicted", he would be transferred to a prison for "recidivists", and that in the meantime it would breach the statutory requirement to keep "recidivist" and "non-recidivist" prisoners apart if he

were allowed to mix with "non-recidivists" in the prison school (see paragraph 7 above). Subsequently, the prison governor also refused his request on similar grounds (see paragraph 8 above). When the applicant appealed against the decision of the prison authorities to exclude him from the school, the Stara Zagora Regional Court found that he could not be classified as a "recidivist" and ordered the prison governor to admit him to the school. On the further appeal of the prison governor, the Supreme Administrative Court quashed the Regional Court's judgment on the ground that the applicant was not entitled to take part in the prison's educational programme because the right to education was envisaged by the relevant legislation as applying solely in regard of persons deprived of liberty as a result of a final conviction and not in regard of those detained on remand (see paragraph 12 above).

37. In addition, during the proceedings before this Court, the Government relied on three different grounds to justify the applicant's exclusion from the school. Firstly, they contended that, as a remand prisoner, it was not appropriate that he should attend school with convicted prisoners. Secondly, they argued that, as a remand prisoner serving an indeterminate period of pre-trial detention, it was inappropriate for him to attend the school which was intended for convicted prisoners serving terms of imprisonment of twelve months or more. Thirdly, they reasoned that since the applicant risked being sentenced as a "recidivist", it would not have been in the interests of the convicted, "non-recidivist" prisoners attending the school for the applicant to have been allowed to attend.

38. For the Court, it is noteworthy that the Government have not supported their arguments with any evidence relating to the conditions applicable in Stara Zagora Prison. The need to protect the applicant by keeping him apart from convicted prisoners, because of his status as a remand prisoner, was not a ground relied on by the prison authorities in rejecting the applicant's requests. Moreover, it was clear from the applicant's many requests to be allowed to attend the school that he had no objection to participating in this activity together with convicted prisoners. In the material before the Court, there is no 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.

39. The second ground relied on by the Government was the indeterminate nature of detention on remand and the requirement in national law for prisoners to be serving sentences of one year or more before being able to enrol in prison schools. However, the Government have not explained why this was a necessary condition for admission to a prison school. With regard, specifically, to remand prisoners such as the applicant,

the Court does not consider that the fact that the ultimate length of their pre-trial detention is uncertain at the start should be used as a justification for depriving them of access to educational facilities, save perhaps in cases where it is clear for some reason that the detention will be of short duration. Moreover, the Government have not provided the Court with any statistical information as regards the availability of resources at the school such as to justify, for example, a policy of concentrating limited resources on those prisoners serving the longest sentences.

40. Finally, with regard to the last ground relied on by the Government, namely the need to keep the applicant apart from other prisoners because of the risk that he would be sentenced as a "recidivist", the Court does not consider this was a legitimate reason, since during the time in question he was an unconvicted prisoner and entitled to the presumption of innocence.

41. The Court does not, therefore, consider any of the grounds relied on by the Government to be persuasive, particularly as they are unsupported by any evidence relating to the precise modalities of providing access to education at the Stara Zagora Prison school. On the other side of the balance must be set the applicant'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 (see paragraphs 21-24 above).

42. In the instant case 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 the restriction placed on the applicant. In these circumstances, on the evidence before it, the Court does not find that the refusal to enrol the applicant in the Stara Zagora Prison school was sufficiently foreseeable, nor that it pursued a legitimate aim and was proportionate to that aim. It follows that there has been a violation of Article 2 of Protocol No. 1 in this case.

B. Alleged violation of Article 6 § 2 of the Convention

43. The applicant complained of a violation of his right to the presumption of innocence, contrary to Article 6 § 2 of the Convention, which provides:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

1. The parties' submissions

44. The Government argued that it was relevant that the alleged violation of the presumption of innocence did not take place within the

context of criminal proceedings, but instead had a bearing only on the facilities available to the applicant in prison. The objective which underlay the decision of the prison authorities was to keep different categories of prisoner separate from each other. This was a justifiable and legitimate aim, and not arbitrary.

45. The applicant reasoned that a breach of the presumption of innocence could never be justifiable or legitimate. The prison authorities were under an obligation to treat him as innocent until his guilt had been proven according to law. The assumption, by the prison authorities, that the applicant was guilty led to his being denied access to the prison school and also to his being accommodated with "recidivists" in the prison.

2. The Court's assessment

46. The Court reiterates that the presumption of innocence under Article 6 § 2 will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before his guilt has been proven according to law. It suffices, in the absence of a formal finding, that there is some reasoning suggesting that the court or the official in question regards the accused as guilty, while a premature expression of such an opinion by the tribunal itself will inevitably run afoul of the said presumption (see, among many other authorities, *Deweer v. Belgium*, judgment of 27 February 1980, Series A no. 35, § 56 and 37; *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, §§ 35‑36; and *Nešťák v. Slovakia*, no. 65559/01, § 88, 27 February 2007). Article 6 § 2 governs criminal proceedings in their entirety, "irrespective of the outcome of the prosecution" (see, among many other authorities, *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62, §§ 27 and 30).

47. In the present case, the applicant's requests to be enrolled in the Stara Zagora Prison School were rejected by the prison authorities on the ground that "once convicted", the applicant would be transferred to a prison for "recidivists" and that he could not, therefore, be admitted to the school because this would bring him into contact with "non-recidivists" (see paragraphs 7-8 above).

48. The Court notes the reasoning of the Stara Zagora Regional Court confirming that the applicant could not be considered a "recidivist" as defined by section 158 of the Execution of Punishments Act because, although he had previously received a sentence of imprisonment, the current set of proceedings against him were still pending and he had not been convicted and sentenced a second time. This question was subsequently considered by the Supreme Administrative Court as irrelevant for the purpose of the applicant's enrolment in the prison school (see paragraphs 9 and 12 above). Against this background, and since the Court has already examined, under Article 2 of Protocol No. 1, the applicant's complaint

about the prison authorities' refusal to enrol him in the school on the ground that he was considered a "recidivist", it does not consider that it would serve any purpose to assess this complaint again under Article 6 § 2.

49. In conclusion, it is not necessary to examine separately the complaint under Article 6 § 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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. Damage

51. The applicant contended that he had missed three school years (2004/2005, 2005/206 and 2006/2007). This left him at a major disadvantage when he was eventually released from prison, when he was unable to find work because of his lack of qualifications and also found it hard to return to school after so long a period outside education. In addition, the discriminatory attitude of the prison authorities caused him intense frustration, despair and loneliness. He claimed 10,000 euros (EUR) in respect of this non-pecuniary damage.

52. The Government contended that the applicant's claim was exorbitant and unfounded and that the finding of a violation would constitute sufficient just satisfaction.

53. The Court notes that the present application concerns only the applicant's complaint that he was refused access to the Stara Zagora prison school during the years 2005/2006 and 2006/2007. It accepts that the applicant must have suffered frustration and anxiety as a result of the violation established in this case and it awards him EUR 2,000 in respect of non-pecuniary damage, together with any tax that may be chargeable to the applicant in respect of this sum.

B. Costs and expenses

54. The applicant also claimed EUR 1,406 for the costs and expenses incurred before the Court, consisting of his lawyer's fees for researching the case and preparing the application and subsequent written observations to the Court.

55. The Government submitted that the work claimed for was not specified in detail and that the amount, therefore, seemed arbitrarily

determined and exorbitant. They asked the Court considerably to reduce the amount payable in legal fees.

56. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court does not consider the sum claimed to have been excessive and awards it in full, together with any tax that may be chargeable to the applicant in this respect.

C. Default interest

57. The Court considers it appropriate that the default interest rate 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, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of Protocol No. 1;

3. *Holds* that there is no need to examine the complaint under Article 6 § 2 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,406 (one thousand, four hundred and six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Ineta Ziemele
Registrar	President