



Impossibility for a paraplegic person to gain access to university buildings: discrimination regarding the right to education

In today's **Chamber** judgment¹ in the case of **Enver Şahin v. Turkey** (application no. 23065/12) the European Court of Human Rights held, by a majority of six votes to one, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights, read in conjunction with Article 2 of Protocol No. 1 (right to education).

The case concerned the impossibility for a paraplegic person (Mr Şahin) to gain access to the university buildings for the purpose of his studies owing to the lack of suitable facilities.

The Court found in particular that the Government had not demonstrated that the national authorities, and in particular the university and judicial authorities, had reacted with the requisite diligence in order to ensure that Mr Şahin could continue to enjoy his right to education on an equal footing with other students. Firstly, a proposal by the rector's office to provide a person to assist him had not been made following an assessment of Mr Şahin's actual needs and an honest appraisal of the potential impact on his safety, dignity and independence. Secondly, the domestic courts had not ascertained whether a fair balance had been struck between the competing interests of the applicant (his educational needs) and of society as a whole. Furthermore, they had omitted to look for possible solutions that would have enabled the applicant to resume his studies under conditions as close as possible to those provided to students with no disability, without imposing an undue or disproportionate burden on the administration.

Principal facts

The applicant, Enver Şahin, is a Turkish national who was born in 1988 and lives in Diyarbakır (Turkey).

In 2005, while he was a first-year mechanics student in the technical faculty of Firat University, Mr Şahin was seriously injured in an accident which left his lower limbs paralysed. He had to suspend his studies until he had recovered sufficiently to return to university.

In 2007 Mr Şahin requested that the faculty adapt the university premises so that he could resume his studies. Citing budgetary reasons and time constraints, the rector's office replied that the adjustments he sought were not possible in the short term, but offered to appoint someone to assist the applicant on the premises. Mr Şahin refused, arguing, among other things, that it would interfere with his privacy. He appealed without success to the administrative courts.

Complaints, procedure and composition of the Court

Relying on Article 2 of Protocol No. 1 to the Convention (right to education) and on Article 14 (prohibition of discrimination) of the Convention, Mr Şahin complained that he had been obliged to give up his studies owing to the refusal of his request for the facilities to be adapted.

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.

Under Article 8 (right to respect for private and family life) read in conjunction with Article 14, Mr Şahin alleged that being assisted by another person would have made him dependent on that person and deprived him of his privacy.

The application was lodged with the European Court of Human Rights on 14 March 2012.

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

Robert Spano (Iceland), *President*,
Julia Laffranque (Estonia),
Işıl Karakaş (Turkey),
Nebojša Vučinić (Montenegro),
Paul Lemmens (Belgium),
Jon Fridrik Kjølbro (Denmark),
Stéphanie Mourou-Vikström (Monaco),

and also Hasan Bakırcı, *Deputy Section Registrar*.

Decision of the Court

[Article 2 of Protocol No. 1 to the Convention \(right to education\) and Article 14 \(prohibition of discrimination\) of the Convention](#)

1. The stance taken by the university authorities

Firstly, in explaining to Mr Şahin that the adjustments he sought could not be carried out in the short term, the university authorities had cited first and foremost a lack of financial resources that could be made available at short notice for that purpose. In that connection the Court was unable to accept that the issue of Mr Şahin's access to the faculty buildings could be left unresolved pending the availability of the full amount needed in order to complete all the major adjustment works required by law.

Secondly, the faculty had not refused the applicant's request outright, but had offered him the assistance of an accompanying person, the purpose and exact nature of which were not explained by the Government. The Court concluded from this that the assistance had been designed solely to help Mr Şahin, who was paraplegic, to move around within the three-storey faculty building. In that regard the Court reiterated that the possibility for persons with a disability to live independently and fully develop their sense of dignity and self-worth was of paramount importance, and that the very essence of the Convention was respect for human dignity and human freedom, including the freedom to make one's own choices². Furthermore, there was nothing in the case file capable of persuading the Court that the rector's office had proposed this measure following an assessment of Mr Şahin's actual needs and an honest appraisal of the potential impact on his safety, dignity and independence. Accordingly, the assistance of an accompanying person could not be regarded as reasonable for the purposes of Article 8, since it disregarded the applicant's need to live as independent and autonomous a life as possible.

² See, among others, *Pretty v. the United Kingdom*, no. 2346/02, §§ 61 and 65, ECHR 2002-III

2. The response by the courts

In accordance with the principle of subsidiarity it had been primarily for the Administrative Court – before which Mr Şahin had raised the same complaints as those alleged in substance before the Court – to give effect to the rights at stake, in particular by ascertaining whether Mr Şahin’s educational needs and the limited capacity of the authorities to meet them had been weighed up in the proper manner, in other words, whether a fair balance had been struck between the competing interests of the applicant and of the society as a whole. However, the Administrative Court had made no mention of these aspects. In the main, while acknowledging vaguely that the administrative authorities were required to implement the technical guidelines aimed at assisting disabled persons, the court had simply exempted the university from that obligation, on the sole grounds that the building had been constructed in 1988, before the entry into force of those guidelines. For the rest, proceeding on the assumption that “architectural measures would be implemented as funds allowed” – although no specific proposal to that effect had existed – the Administrative Court had deemed it sufficient to reiterate that a person would be appointed to assist Mr Şahin, without demonstrating in what way such a solution might prove satisfactory. The court had also omitted to look for possible solutions that would have enabled the applicant to resume his studies under conditions as close as possible to those provided to students with no disability, without imposing an undue or disproportionate burden on the administration.

Consequently, the Court found that the Government had not demonstrated that the national authorities, and in particular the university and judicial authorities, had reacted with the requisite diligence in order to ensure that Mr Şahin could continue to enjoy his right to education on an equal footing with other students. The fair balance to be struck between the competing interests at stake had thus not been achieved, and the Court found a violation of Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1 to the Convention.

Other articles

The Court considered it unnecessary to examine separately Mr Şahin’s other complaints.

Article 41 (just satisfaction)

The Court held that Turkey was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,952 in respect of costs and expenses.

Separate opinion

Judge Lemmens expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in French.

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