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

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Italian legislation limiting access to universities to study dentistry and medicine is reasonable

In today's Chamber judgment in the case of **Tarantino v. Italy** (application nos. 25851/09, 29284/09 and 64090/09), which is not final[1], the European Court of Human Rights held, by six votes to one, that there had been:

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

The case concerned eight students' complaints about the restrictions imposed on them by Italian legislation aimed at limiting access to universities, following their unsuccessful attempts to obtain a place in the faculties of medicine and dentistry.

For the first time the Court has had to assess the compatibility with the right to education in the tertiary sector of the operation of a *numerus clausus* (the maximum number of candidates allowed to enter a university) coupled with an entrance examination. The Court concluded that the State had not exceeded its wide discretion to decide on such a matter as regulating access to education. It essentially found that there existed a right to access education only in so far as a university had the capacity and resources and in so far as society had a need for a particular profession, unemployment representing further expenditure for society at large.

Principal facts

The first applicant, Claudia Tarantino, is an Italian national who was born in 1988 and lives in Palermo (Italy). The remaining applicants are seven Italian nationals who were born between 1966 and 1988.

In Italy, the *numerus clausus* applies to certain vocational faculties such as medicine and dentistry in both public and private sector universities.

In 2007, 2008 and 2009, Ms Tarantino successively failed to pass the entrance examination to gain access to the Faculty of Medicine in Palermo. On two occasions, she lodged a complaint with the President of the Republic. However, her request to refer the matter to the European Court of Justice and to be provisionally admitted to the University was systematically rejected.

The other seven applicants have been or are still working as dental technicians or hygienists for a number of years. Six of them failed to pass the entrance examination to gain access to the Faculty of Dentistry in 2009 despite their relevant professional experience. The remaining applicant, Mr Marcuzzo, passed the entrance examination but lost his student status following his failure to sit exams for eight consecutive years. These applicants did not pursue available domestic remedies since, in their views, they would have been ineffective.

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

Complaints, procedure and composition of the Court

Relying in particular on Article 2 of Protocol No. 1 (right to education), all eight applicants complained in particular that the Italian legislation limiting access to universities and the resulting restrictions imposed on them were contrary to the Italian Constitution as well as European Union law.

The applications were lodged with the European Court of Human Rights on 18 May 2009, 2 November 2009 and 16 November 2009, respectively.

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

Danutė **Jočienė** (Lithuania), *President*,
Guido **Raimondi** (Italy),
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),

and also Françoise **Elens-Passos**, *Deputy Section Registrar.*

Decision of the Court

Article 2 Protocol n° 1

Considering that the Italian courts had consistently rejected the claimants' request in similar cases, the Court held that an attempt to bring proceedings before them would have had no prospects of success. Therefore, even though some of the applicants had not taken their case through the Italian courts, their complaint was still declared admissible.

In this case, the Court considered that the restrictions imposed on students on the basis of the legislation had been foreseeable. Moreover, they conformed to the legitimate aim of guaranteeing an appropriate level of skills for future professionals through high-quality education.

The Court essentially focused its reasoning on the proportionality of the restrictions.

As to the entrance examination requirement, it found that identifying the most meritorious students through relevant tests had been a proportionate measure in order to guarantee a minimum level of education in the universities.

As to the maximum number of candidates allowed to enter a university (*numerus clausus*), the criteria applied by the Italian authorities, namely the material resources of universities and society's need for a particular profession, had achieved a balance between the interests of the applicants and those of society at large, including other students. Indeed, the right to education only applied insofar as it was available and within the limits pertaining to it. Such restrictions applied to both public and private universities, since the latter were partly reliant on State subsidies. In any event, the Court held that access to private institutions should not be available purely on account of the financial ability of candidates, regardless of their qualifications. Furthermore, it was reasonable for the State to aspire to the assimilation of each successful candidate into the labour market since unemployment could be considered a social burden on society at large. Nor was it unreasonable for the State to err on the side of caution and base its policy on the assumption that graduates would not necessarily seek employment abroad, a high percentage of them remaining in Italy to seek employment.

Lastly, the applicants had neither been denied the right to apply to any other courses nor to pursue their studies abroad and could have sat the test as often as necessary to be successful.

Therefore, the Court concluded that the State had not exceeded its wide discretion to decide on such a matter as regulating access to education. It therefore held, by six votes to one, that there had been no violation of Article 2 Protocol No. 1.

The Court further held, unanimously, that there had been no violation of Article 2 of Protocol n° 1 as concerned Mr Marcuzzo's additional complaint that he had been made to re-sit the entrance examination after having been excluded from the course following his eight-year absence. It considered that it was not unreasonable to exclude a student from a course when he had failed to sit examinations for eight consecutive years, particularly given that a *numerus clausus* applies to the university course in question.

Separate opinion

Judge Pinto de Albuquerque expressed a partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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