The King on the application of Fajr Ellis v Secretary of State for Justice

No Substantial Judicial Treatment

Court
Court of Appeal (Civil Division)

Judgment Date
3 July 2025

Case No: CA-2024-000255

Court of Appeal (Civil Division)

[2025] EWCA Civ 831, 2025 WL 01827880

Before: Lord Justice Bean Lord Justice Nugee and Mr Justice Cobb

Date: 03/07/2025

On Appeal from the High Court of Justice King's Bench Division Administrative Court

Mrs Justice Foster

[2023] EWHC 2230 (Admin)

Hearing date: 11 June 2025

Representation

Philip Rule KC and Ffyon Reilly (instructed by Kesar & Co Solicitors) for the Appellant.
Jennifer Thelen (instructed by Government Legal Department) for the Respondent.

Approved Judgment

Lord Justice Bean:

1. On 19 July 1996 the Claimant, then aged 19, was sentenced to detention for life following a conviction for attempted murder. The tariff originally imposed was reduced on appeal to 7 years and expired in 2002. However, he remained in prison for more than 20 years after the expiry of the tariff period and was not released until 23 January 2025. He was serving his sentence at HMP Hull when the present judicial review claim was brought on 3 May 2022. On 18 November 2022 he was transferred to HMP Isle of Wight.

2. The Claimant was 19 at the date of his first imprisonment and without qualifications. He obtained an undergraduate degree from the Open University ("the OU"), and on 1 October 2018 began a research-based MSc in sustainable development from the School of Oriental and African Studies ("SOAS"), University of London. He had unavoidable interruption due to serious

illness however, his studies continued and on 18 February 2019 he applied for a student loan, which after initial rejection was accepted and awarded by the Secretary of State for Education.

3. The judicial review claim was originally against both the Secretary of State for Education and the Secretary of State for Justice, and was heard by Foster J at Leeds on 14 -15 March 2023. It had three elements:

(1) A challenge to the Regulations governing student loans. These permitted eligible prisoners to apply for a loan but with certain restrictions which do not apply to students outside prison. The Claimant alleged that this interfered unlawfully with his right to access to education. The judge dismissed that challenge and no application was made for permission to appeal that part of the decision to this court;
(2) The "generalised restriction of access challenge", relying on Article 2 of Protocol 1 to the ECHR ("A2P1"). The judge dismissed that part of the claim. I shall return to it in the course of this judgment.
(3) A particular decision to withdraw Mr Ellis' use of his Chromebook and to restrict his access to IT at HMP Hull. This made completion of his coursework difficult, and was said to be an unlawful interference with his right to education. The judge upheld that part of the judicial review claim.

4. Mr Ellis appeals to this court against the dismissal of the generalised restriction to access challenge pursuant to permission granted by Nugee LJ on 13 December 2024. The Secretary of State for Justice is now the sole Respondent to the appeal.

The generalised right of access challenge

5. The Appellant's claim before the High Court included a broad-based challenge arguing that "the present regulation and/or system and/or actions or omissions of the Defendants unlawfully impeded the Claimant from pursuing his education". Mr Ellis complained of restricted access to specialist books and to the university's online library, restricted access to photocopying and difficulty in receiving materials (amongst other inconveniences).

6. Paragraph 3.1 of the Prison Education & Library Services Policy Framework, issued under the authority of the Respondent, indicates that prisons should offer learning provision "appropriate to the needs and aspirations of its prisoners", taking account of the prisoner cohort; prisoners should be engaged and supported to access the learning and education that best meets their needs; and all prisoners should regularly be able to access appropriately stocked libraries which support them in their learning and personal development.

7. Internet access by prisoners is governed by Prison Service Instruction (PSI) 25/2014 IT Security Policy (the "IT Policy"). The relevant provisions are:

> "16.6 Access to the Internet by Prisoners
>
> The basic principle that applies to all forms of communication – preventing the transfer of information that might aid crime, threaten prison security or aid escape from custody and the protection of victims must be applied with regards to Internet access for prisoners and supervised individuals in the community.
>
> 16.7 Access to Internet facilities may allow prisoners or supervised individuals in the community to abuse [or harass] victims either through direct, electronic communication or by indirect proxy contact outside the prison and these considerations must be weighed against any perceived advantages.

> 16.8 The risk exists that prisoners could use the Internet to commit, prepare for or encourage crime whilst in custody. Additionally, they could access material that might endanger the security of the prison e.g., access to bomb-making techniques.
>
> 16.9 The accessibility of learning materials by prisoners in custody must be balanced against security considerations. Access to the Internet will only be granted following a thorough risk assessment on a case-by-case basis of the system, hardware, software and connectivity. Prisoners access to IT whilst in custody is subject to individual assessment as per the National Security Framework and advice on appropriate access controls can be obtained from security group, the IPA team.
>
> 16.10 Prisoners must not be allowed uncontrolled access to the Internet and/or to a computer or IT system whilst in custody that has software installed enabling Internet connectivity without seeking approval from security group, the IPA team and the completion of a thorough risk assessment."

8. The Secretary of State adduced evidence from Ms Anderson, the Head of Prison Education Policy at the Ministry of Justice, who stated that the usual route to further education for prisoners was via the OU:

> "Higher education in prisons is primarily geared towards prisoners studying OU courses. The vast majority of prisoners across the prison estate, studying undergraduate or postgraduate degrees, undertake an OU course. The OU tailor-makes its curriculum, creates bespoke study packs and offers personalised support for prisoners. The MoJ is a partner of the OU and worked with the OU to create a 'Virtual Campus' ('VC'), a computer system that allows students to access their learning materials in digital form whilst maintaining security standards. Further, the MoJ provides grant funding to the OU. For April 2020 to March 2023, a grant of £2,505,000 is in place. The purpose of the grant is to help enable prisoners to access higher education, by helping to cover costs related to the provision of learning materials (the OU produce bespoke textbooks and associated workbooks), tutor support, administration and advice, and other costs that arise by virtue of the student being located in prison. I note that the MoJ also has a memorandum of understanding in place with the OU. In light of the above, prisoners are encouraged to study higher education courses through the OU whose courses are designed so that prisoners receive all the materials they need, and do not need to seek out additional resources. It is open to prisoners to study through other universities and course providers, as the Claimant has done. However, prisoners may naturally encounter some practical difficulties in pursuing these courses, as such courses are not designed to be studied by prisoners. It is ultimately a decision for a prison's governor as to whether a prisoner may study a particular course."

9. The Respondents' case before the judge was that that the Appellant had significant assistance and facilities available to him including the following:

i) Local prison support: At HMP Hull he had designated local long distance learning support, with a distance learning coordinator (DLC), who acted as an intermediary between the Appellant and his course provider, printed out resources on request, arranged telephone tutorials and provided support with various things, such as academic writing.
ii) Printing and post: HMP Hull printed course work for the Appellant, who had been asked to make regular requests for printing to ease the burden. The problems with receipt of materials from the university arose because the materials were not properly marked, and advance notification was not provided to relevant prison staff. A review of procedures took place with the Appellant and his university tutor, to ensure receipt of coursework and books by post, which arrangements the Respondents said were working well at the time of the response to the judicial review.

iii) IT facilities: The Appellant normally had access to the internet via the VC2 within the Education Department, with sessions of up to 27 hours per week. There was no limit to the amount of work he could save on the VC2.
iv) Site access: The Education Department provided access to sites that were cleared as safe " *white sites* ". Prior to leaving HMP Hull, the prison was looking into how the Appellant could be given independent access to the university website, which was not on that list.
v) Until 28 January 2022, the Appellant also had access to a Chromebook. This was removed for a period but has been restored at HMP IOW.
vi) Tutor access: At HMP Hull the Appellant could make as many telephone calls in a day as desired to approved numbers, including calling his tutor from his cell. Across the prison estate it is the case that a call may only last 15 minutes. After 5 minutes another call can be made. He was able also to use one of his two video calls per month to speak to his tutor face to face.
vii) A system was set up for him to exchange drafts of his dissertation with his tutor for feedback.

10. The Respondent submitted before the judge that whilst there were admitted difficulties on occasions these were due to operational impediments such as illness of his designated personnel, the failure properly to mark parcels and operational delays in the usual way, and it is impossible to characterise the provision as systemically inadequate or in breach of the obligations imposed by the framework.

11. Ms Anderson admits that Mr Ellis did not have access to the IT facilities in the Education Department between 28 January 2022 and 6 April 2022, while the security department conducted investigations. She justified this on the basis of the steps they reasonably required to take on security grounds. She points to the positive outcome with the Appellant in fact receiving his degree.

The judge's refusal of permission to amend the claim

12. One issue before the judge was that the Appellant sought to rely on an additional Statement of Facts and additional evidence relating to incidents after the issue of the claim. This covered a period of about 6 months at HMP Hull and a further period after Mr Ellis was moved to HMP Isle of Wight. The judge refused the application. She said at paragraph 53:-

> "I am clear that the Claimant may not expand this judicial review to challenge a running selection of incidents complained of after this claim was issued or at the new establishment. As noted by Miss Thelen, the application was made very late, contained a plethora of factual assertion, and the Defendants have had insufficient time to respond in appropriate detail. This appears to be the fourth change to the Claimant's factual case and/or evidence since inception, and although the new material is contained in a new bundle for the Court it is not agreed."

13. The judge referred to the observations of this court in *R (Dolan) v Secretary of State for Health and Social Care [2020] EWCA Civ 1605, [2021] 1 WLR 2326* , deprecating the trend towards a "rolling approach to judicial review". She continued:-

> "This case is one of those where the state of the evidence is central to the assertions made. Further, in the present context as Ms Anderson's evidence explained, the provision of education is, within broad policy parameters, one that is devolved upon individual Governors and in this case the Claimant has been moved to a different establishment. The evidence available to the Court suggests that the Claimant's position evolved significantly both at HMP Hull and at HMP IOW…"

14. She held that:-

> "It is inappropriate to treat this application for judicial review as a continuous process whereby the Court reviews the ongoing decision-making, insofar as it is brought to its attention, of a new establishment not the subject of the judicial review for which permission was granted. This is as Miss Thelen submitted, approaching a case of the kind averted to by Munby J in *R (P) v Essex County Council [2004] EWHC 2027 (Admin)* , where he drew a distinction between monitoring and regulating the performance of public authorities, and challenges to discrete decisions. The latter being the proper purview of the Administrative Court. However, the real difficulty is that the Defendants have submitted there has been no opportunity to take detailed evidence as would be required in a matter so connected to the day-to-day evidence at HMP IOW, where systemic challenges are again sought to be made on the basis of allegations of individual practical failings."

The judge's ruling on the generalised restriction of access challenge

15. At paragraphs 63-65 Foster J said:

> "63. The Claimant suggests that the Second Defendant violated A2P1 through the absence of facilities made available to the Claimant, or the imposition of restrictions upon him. I reject this challenge. I accept, as submitted by Miss Thelen, that on the facts, the difficulties faced at HMP Hull were operational impediments - such as mis-addressing materials, illness, and the requirement to use sometimes indirect means of communication (through the DLC, for example) and not systemic under-provision nor denial of access to education in the sense understood by the authorities. To the extent that there were security checks on materials arriving at the prison, or set processes for receipt of study material, or the indirect nature of some communications with teachers and teaching institutions, it is impossible to say that they were not proportionate to the circumstances and the inevitable (perhaps occasionally somewhat disruptive) requirements of the prison security regime."
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> 64. As the Defendants point out in their skeleton argument, in *Arslan* the Claimants were denied all access to a computer and Internet, where that access was vital for the continuation of their higher education studies. In the present case a number of initiatives and workarounds, including access to a non-OU "tailored" post-graduate course of study, have been put in place for the Claimant and the fact that the provision of and access to higher education may differ from what may be available outside prison is not evidence that it is unlawful and infringes the Claimant's rights. Even though on occasions evidencing a clunky system and some management hiccoughs (books sent back when arriving without warning, the need to use a social video slot for an academic encounter for example), even taking the picture as including long out of time examples, the whole does not add up to a breach of the obligation to afford access to education to the Claimant.
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> 65. The list of accommodating strategies that HMP Hull employed, set out in the evidence of Ms Anderson, ….make clear this was not in any event a picture of failure that produced a lack of access; the Defendants have sought to remedy the issues that affected the Claimant adversely personally within the necessary constraints of the regime at HMP Hull. The strategies they used were comfortably adequate to afford him lawful access to education whilst in prison. It is unreal to

> expect that there will be entirely hindrance -free learning given the fact of the security imperative (see for example the provisions of the IT Policy contained in PSI 25/2014 IT Security Policy)."

The grounds of appeal

16. The main ground of appeal submits that Foster J erred by "wrongly setting the threshold for an unlawful interference with A2P1 rights at a level not equivalent to that set in Strasbourg" and that "the threshold for the breach of A2P1 is not such as to require an impossibility to educate, or a full denial of access, and is met by actions that render the effective access to the process of education absent without positive justification for that restriction."

17. A further ground argues that the judge was wrong to refuse permission to amend the claim to include events occurring following the issue of the claim form which were said to involve ongoing violation of A2P1. I will consider the latter ground first.

The application to amend: discussion

18. As noted above, the events complained of began in 2021 and were included in the claim issued in May 2022. Mr Rule accepted in oral argument before us that his client's time at HMP IOW from November 2022 raised new issues of fact which the judge was entitled to say should not be dealt with in the present claim, but argued that we should consider events in the period May to November 2022, as well as those that preceded the bringing of the claim.

19. In my view the judge was plainly entitled to draw the line at the date of issue of the claim. Indeed, I do not follow why the additional six months would make any difference. The Appellant is raising points of principle under A2P1 about interference with his right to access to education. He is not, as Mr Rule confirmed, seeking damages in domestic law. The Statement of Facts and Grounds sought a declaration about the student loan regulations which the judge rejected; a declaration that the Claimant had been unlawfully inhibited from accessing and completing higher education, in violation of his A2P1 and Article 14 rights; an order to quash a decision of 6 April 2022 (relating to the Chromebook) which the judge granted; a mandatory order which is on any view no longer necessary since the Appellant's release from custody; and "such other just satisfaction as the court shall deem fit". I agree with all that the judge said about the need to avoid a rolling judicial review in a case of this kind. I turn next to the main ground of appeal.

The ground relating to the generalised right of access challenge

The Appellant's submissions

20. Mr Rule submits that under A2P1 it is not necessary to establish an impossibility to receive the education in question, but to identify that there is lack of a considered justification for the impediment placed upon the individual's ability to learn.

21. The high point of his submissions was the decision of the European Court of Human Rights (ECtHR) in *Mehmet Arslan and Orhan Bingol v Turkey* (18 June 2019). A prisoner sentenced to life imprisonment was denied access to a computer and to the internet. A Turkish statute allowed the possibility of such access under certain conditions. The court said:-

> "55. The Court emphasises, first of all, that 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 explicitly 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 to 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; 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….. …

56. As regards the right to education, the Court 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 *Velyo Velev* , cited above, § 32).

57. 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…" (ibid., § 33).

58. Even though the Court is aware of the Committee of Ministers' recommendations to the effect that educational facilities should be made available to all prisoners (see paragraph 36 above) (see *Velyo Velev* , cited above, §§ 21-24), 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 (ibid., § 34; see also the references therein). It notes, however, that the present applicants' complaint concerns the refusal to them of access to a pre-existing educational institution, namely the possibility of using a computer and Internet, as well as other electronic and audiovisual facilities aimed at training and education, which facilities were vital for the continuation of their higher education and the furtherance of their general knowledge. 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. 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 (ibid., § 34).

59. Finally, the Court notes that, as explained above, the restriction on the applicants' right to education was based on the rejection of their requests under section 67 of Law no. 5275 to be allowed to use a computer and have access to Internet in order to be able to continue their chosen academic studies. Basically, therefore, they are not being allowed to request admission to an existing educational programme of their choosing. Consequently, in assessing the applicants' complaint under Article 2 of Protocol No. 1 the Court will take due account of its case-law, hitherto developed under Article 10 of the Convention, on the right of prisoners to Internet access (see *Kalda* and *Jankovskis* , cited above). That case-law shows that in order to determine whether a refusal to provide

> prisoners with Internet access is justified in a given case, an assessment should be made of whether the domestic courts conducted an adequate evaluation of the actual risks to security inherent in the particular case, thus properly balancing the competing interests."

22. At [69] the court said:-

> "The Court reiterates that the manner and means of regulating the mode of access to such facilities in prison fall within the Contracting State's margin of appreciation. In that connection, even though the security considerations advanced by the national authorities and the Government might be considered relevant in the present case, it observes that, as in the cases of *Kalda* (cited above, § 53) and *Jankovskis* (cited above, § 61), the domestic courts conducted no detailed analysis of the security risks and failed, on the one hand, to conduct the requisite exercise of balancing the different competing interests in the present case, and on the other, to fulfil their obligation to prevent abuse on the authorities' part. Under those conditions, the Court is not convinced that sufficient arguments have been advanced in the present case to justify the authorities' rejection of the requests to benefit from the right created under section 67 (3) of Law no. 5275."

23. Mr Rule points to the fact that in *Arslan* the Court cited two previous decisions which he submits support his case. The first is *Kalda v Estonia (2016) 42 BHRC 145* . The applicant was a prisoner who wished to be granted access via the internet to information published on three particular government information websites, but was refused such access. A violation of Art. 10 ECHR was found. Although imprisonment inevitably involves a number of restrictions on prisoners' communications with the outside world, including on their ability to receive information, and there is no general obligation to provide prisoners with access to the internet, or to specific sites, nonetheless, the Court found that if access to the particular sites was to be denied then it would expect "detailed analysis as to the security risks allegedly emerging from the access to the three additional websites in question."

24. The other case referred to was *Jankovskis v Lithuania* [2017] ECHR 21575/08. This concerned an applicant prisoner (who wished to acquire a second university degree) complaining of restricted access to the website of the Ministry of Education and Science preventing him from receiving education-related information. The court found a violation of Article 10. The court referred to the principles elaborated in *Kalda* and placed emphasis, in particular, on the nature of the information which the applicant sought to obtain. It said it was "not persuaded that sufficient reasons have been put forward in the present case [by the state] to justify the interference with the applicant's right" (to receive information).

25. Mr Rule further submits, on the authority of *Velev v Bulgaria (2014) 37 BHRC 406* that where an educational opportunity is available to a prisoner it should not be subject to arbitrary and unreasonable restrictions.

Respondent's submissions

26. Ms Thelen's submissions included the following:

> "(i) The right is narrow and is concerned with access to the established system of education. The correct approach is to ask if an individual is able to access the basic standard of education available – not has the state failed to do all it could do to ensure a pupil is accessing education.
>
> (ii) This was the case even where a public authority is in breach of its duties under domestic law. A2P1 does not guarantee compliance with domestic law.

> (iii) The ECtHR has considered the application of A2P1 in the context of prisons. The cases on which the Appellant relies, apply, rather than expand, [established] principles The right is not absolute, and may be subject to limitations Where educational facilities are available for prisoners, they should not be subject to "arbitrary and unreasonable restrictions" which limit effective access to education: Restrictions which so limit access must be foreseeable, pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved: Contracting States enjoy a "certain margin of appreciation in this sphere".

Discussion

27. The first sentence of A2P1 reads: "No person shall be denied the right to education." In the *Belgian Linguistics case (1968) 1 EHRR 252, 280* , one of the earliest decisions of the ECtHR, the Court said: "The negative formulation [of A2P1] indicates … that the Contracting Parties do not recognise such a right to education as would require them to establish at their expense, or to subsidise, education of any particular type or at any particular level."

28. In *A v Head Teacher and Governors of Lord Grey School [2006] 2 AC 363* Lord Bingham of Cornhill stated (at paragraph 24):

> "The Strasbourg jurisprudence … makes clear how article 2 should be interpreted. The underlying premise of the article was that all existing 8 member states of the Council of Europe had, and all future member states would have, an established system of state education. It was intended to guarantee fair and non-discriminatory access to that system by those within the jurisdiction of the respective states. The fundamental importance of education in a modern democratic state was recognised to require no less. But the guarantee is, in comparison with most other Convention guarantees, a weak one, and deliberately so. There is no right to education of a particular kind or quality, other than that prevailing in the state. There is no Convention objection to the expulsion of a pupil from an educational institution on disciplinary grounds unless … there is no alternative source of state education open to the pupil …. The test, as always under the Convention, is a highly pragmatic one, to be applied to the specific facts of the case: have the authorities of the state acted so as to deny a pupil effective access to such educational facilities as the state provides for such pupils?"

29. In *A v Essex County Council [2011] 1 AC 280* the claimant was autistic, had serious learning difficulties, suffered from epilepsy and incontinence and exhibited challenging behaviour. He was withdrawn from school and only placed at a special school (at very great expense) after 18 months during which time he had received almost no education. However, after that he made good progress. The Supreme Court held by a majority that the fact that it took the local authority 18 months to secure a placement did not amount to a denial of the claimant's right to education contrary to A2P1.

30. Mr Rule submitted that the classic passage in *Lord* Bingham's speech in the *Lord Grey School* case is not to be read as if it were a statute (though I note that in *A v Essex County Council* Lord Clarke JSC did say that it set out the legal principles relevant to that case) and that subsequent Strasbourg case law, in particular *Arslan,* goes further. But it remains a principle of the Strasbourg case law on A2P1, consistent with what Lord Bingham said, that the Court is concerned only with restrictions which "impair the very essence of the right to education". For example, in *Catan v Moldova and Russia (2013) 57 EHRR 4 (at §140)* the ECtHR said that:

> "Provided that there is no injury to the substance of the right, these limitations are permitted by implication, since the right of access [to education] 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 arts 8-11 of the Convention, it is not bound by an exhaustive list of "legitimate aims" under [A2P1]. Further, a limitation will only be compatible with [A2P1] if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved": [emphasis added]

31. I do not consider that *Arslan* will bear anything like the weight which Mr Rule seeks to place on it. The ratio of the case, as it seems to me, is that a restriction on *all* access to a computer and to the internet, where that access was vital for the continuation of the applicants' higher education studies, amounted to a breach of A2P1. It impaired the very essence of the right of access to education. The Court's judgment repeatedly emphasised the margin of appreciation afforded to Contracting States in this field. *Arslan* , on its proper construction, does not indicate that, in a case brought by a serving prisoner, there is an onus on the respondent state to justify in detail the proportionality of every interference with or restriction on his access to education facilities, save where the restriction is so severe that the very essence of the right is being impaired.

32. Although cited in *Arslan,* I do not accept that either *Kalda* or *Jankovskis* has much relevance to the present case. One obvious distinction is that both these cases were concerned with alleged breaches of ECHR Article 10. Article 10(1) confers a general right (among other things) to receive and impart information and ideas without interference by public authority. But Article 10(2) permits the imposition of restrictions and conditions which are prescribed by law and "necessary in a democratic society" in order to further one of the listed legitimate aims. A2P1 does not have the same structure. Another is that what the applicants were seeking was, in Kalda's case, access to government or Council of Europe websites in order to assert or defend his rights in court; in Jankovskis' case, information on learning and study programmes in Lithuania. The total bans which prevented such access were found to be disproportionate and not necessary in a democratic society. But this tells us very little about whether the inconveniences endured by Mr Ellis in his ultimately successful pursuit of a Master's degree from SOAS amounted to a violation of his rights under A2P1.

33. Ms Thelen submits that:

> "The Appellant's approach turns the established caselaw on A2P1 on its head, and in particular the fact that A2P1 does not require the State to provide, or fund, education of a particular type or level. Effectively, the Appellant says the State should have been required to devote more resources to his education, in order to limit the obstacles he faced in undertaking the distance learning course he chose and to provide him the support he felt would allow him to perform to the best of his ability. That request falls far outside the scope of A2P1."

34. I agree. None of the events covered by the generalised right of access challenge came anywhere nearing impairing the very essence of the Appellant's right of access to education. I do not consider that there was anything erroneous in the way the judge dealt with the Appellant's case under A2P1.

35. Two days after the hearing before us the Divisional Court handed down judgment in *R (ALR) v Chancellor of the Exchequer and others [2025] EWHC 1467 (Admin)* . Its conclusions as to the nature of the state's duty under A2P1 seem to me entirely consistent with ours.

36. I would dismiss this appeal.

Lord Justice Nugee:

37. I agree.

Mr Justice Cobb:

38. I also agree.