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AD HOC COMMITTE FOR THE PROTECTION OF NATIONAL MINORITIES

(CAHMIN)

Document containing summaries of the decisions of the European Commission of Human Rights and the European Court of Human Rights

CASE LAW OF THE COMMISSION AND THE COURT

Introduction:

At the 8th meeting of the CAHMIN (7-10 November 1994) the Committee identified 11 areas which could be examined with a view to an Additional Protocol to the ECHR guaranteeing individual rights in the cultural field. At the request of the Secretariat, Ms Ida HUUSSEN, an intern with the Directorate of Human Rights, prepared this document which summarises, for each of these areas, the existing case law of the Commission and the Court of Human Rights in so far as it appears relevant to the selection of rights and the drafting of corresponding provisions. As a last point, to complement the list of areas, other relevant case-law has been included.

The summaries of relevant case law are mainly taken from two earlier studies:

- AS/Jur (43) 27 rev., The Rights of Minorities, Case law of the European Commission and Court of Human Rights, Memorandum prepared by the Secretariat of the European Commission of Human Rights (31 January 1992) (marked hereafter in the margin with A).
- The European Convention on Human Rights and the Protection of National Minorities, Christian Hillgruber and Matthias Jestaedt, (1994) (marked hereafter in the margin with B).

As the latter study covers case law up to February 1993, additional research was undertaken to supplement these studies with recent case law of the Commission up to October 1994 (the 249th Session of the Commission of Human Rights). The case law of the Court has been updated to 31 December 1994.

There was no time available to carry out a thorough analysis of the case law; the decisions of the Commission and the Court have only been summarised and classified under the most appropriate heading (marked hereafter in the margin with C).

1. THE RIGHT TO A NAME:

Jurisprudence:

B p.43,44- A legally founded obligation to bear a shared married name, which provides family unity a recognizable outward form, appears principally justified, in view of the regulating function of names: see Hagmann-Hüsler v. Switzerland, Decision of 15-12-1977, App. No. 8042/77, 12 Eur. Comm. H.R. Dec. & Rep. 202, at 203.

C - The Commission considers in App. no. 18806/91, Decision of 1 September 1993 that: "The right to develop and fulfil one's personality necessarily comprises the right to identity and, therefore, to a name (S. Burghartz and A. Schnyder Burghartz v. Switzerland, Comm. Report 21.10.92, para. 47). The Commission, therefore, considers that Article 8 of the Convention applies in the present case.

The Commission also recalls that the notion of "respect" enshrined in Article 8 is not clear cut. This is the case especially where the positive obligations implicit in that concept are concerned. Its requirements will vary considerably from case to case according to the practices followed and the situations in the Contracting States. In determining whether such an obligation exists regard must be had to the fair balance that has to be struck between the general interest and the interests of the individual (cf. Eur. Court H.R., B. v. France judgment of 25 March 1992, Series A no. 232-C, p. 47, para. 44)".

"The Commission accepts that there may be exceptional cases where the carrying of a particular name creates such a suffering or practical difficulties that the right under Article 8 of the Convention is affected. There are, however, good reasons for restrictions in this area, and a right to change one's surname cannot, in principle, be considered to be included in the right to respect for private life, as protected by Article 8."

C - In the case of Burghartz v. Switzerland (judgment of 22 February 1994, Series A, No. 280-B, p. 8) the Court considered that: "Unlike some other international instruments, such as the International Covenant on Civil and Political Rights (Article 24 § 2), the Convention on Rights of the Child of 20 November 1989 (articles 7 and 8) or the American Convention on Human Rights (Article 18), Article 8 of the Convention does not contain any explicit provisions on names. As a means of personal identification and of linking to a family, a person's name none the less concerns his or her private and family life. The fact that society and the State have an interest in regulating the use of names does not exclude this, since these public-law aspects are compatible with private life conceived of as including, to a certain degree, the right to establish and develop relationships with other human beings, in professional or business contexts as in others (see, mutatis mutandis, the Niemietz v. Germany judgment of 16 December 1992, Series A no. 251-B, p 33, § 29).
In the instant case, the applicant's retention of the surname by which, according to him, he has become known in academic circles may significantly affect his career. Article 8 therefore applies."

C - In the case of Stjerna v. Finland (judgment of 25 November 1994, Series A no. 299-B) the Court notes that: " Article 8 does not contain any explicit reference to names. Nonetheless, since it constitutes a means of personal identification and a link to a family, an individual's name does concern his or her private and family life (Burghartz v. Switzerland judgment of 22 february 1994, Series A no. 280-B, p. 28, §24)".
"The refusal of the Finnish authorities to allow the applicant to adopt a specific new surname cannot, in the view of the Court, necessarily be considered an interference in the exercise of his right to respect for his private life, as would have been, for example, an obligation on him to change his surname. However, as the Court has held on a number of occasions, although the essential object of Article 8 is to protect the individual against arbitrary interferences by the public authorities with his or her exercise of the right protected, there may in addition be positive obligations inherent in an effective "respect" for private life."
"Whilst therefore recognising that there may exist genuine reasons prompting an individual to wish to change his or her name, the Court accepts that legal restrictions on such a possibility may be justified in the public interest; for example in order to ensure accurate population registration or to safeguard the means of personal identification and of linking the bearers of a given name to a family."
"The Court deduces that in the particular sphere under consideration the Contracting States enjoy a wide margin of appreciation. The Court's task is not to substitute itself for the competent Finnish authorities in determining the most appropriate policy for regulating changes of surnames in Finland, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (...)".
"In any event, in the view of the Advisory Committee on Names, the use of the name Tavaststjerna involved similar practical difficulties to those associated with Stjerna (...). In this connection the Court considers that the national authorities are in principle better placed to assess the level of inconvenience relating to the use of one name rather than another within

their national society and, in the present case, no sufficient grounds have been adduced to justify the Court coming to a conclusion different from that of the Finnish authorities."

2. THE RIGHT TO EDUCATION:

Jurisprudence:

A p.10 - The Belgian Language Case:
In this case the Convention organs examined the question of linguistic discrimination with regard to access to school (Article 14 in conjunction with Article 2 of Protocol No. 1 and Article 8 of the Convention). The Court analyzed this question in relation to a number of criteria, finding discrimination only in so far as members of one linguistic group were clearly placed at a disadvantage in comparison to those of the other in certain areas (cf. Belgian Linguistic judgment, judgment of 23 July 1968, Series A no. 6). In the Commission's Report concerning the same case it was inter alia emphasised that the measures in question were to be regarded as discriminatory because they were specifically designed to assimilate minorities (para. 431). The system of regulating access to school according to linguistic criteria was, however, not as such found to be in breach of Article 14. In particular the legislation and practice in the unilingual territories was not found to be in violation of the Convention (ibid). This was also confirmed in a number of follow-up cases (No. 2924/66, Vanden Berghe v. Belgium, Dec. 16.12.68, Yearbook 11 p. 412 concerning the regulation for Brussels, No. 4372/70, Dec. 2.2.71, Yearbook 14, p. 398, and No. 4653/70, Dec. 1.4.74, Yearbook 17 p. 148 concerning the effects of the linguistic school legislation on a Greek child).

B p.25-28 It follows from the negative formulation and the genesis of Art. 2 of the First Protocol that the contracting parties do not recognize a right to education that obligates them to establish or subsidize at their own expense an educational system of a certain kind or at a certain level. The safeguarding given in the first sentence of Art. 2 of the First Protocol could not have the purpose of obligating every State to establish universal, public educational systems, but rather to guarantee all persons under the dominion of the Contracting Parties the basic right to make use of the educational institutions existing at a given point in time. The Convention does not provide the basis for any specific obligations regarding the scope of these institutions or the manner in which they are to be designed or subsidized. In particular, the first sentence of Art. 2 of the First Protocol does not indicate the language in which instruction has to be provided in order to comply with the right to education. However, this right would be meaningless if it did not serve as the basis for the right of its holder, according to the circumstances of the case, to receive an education in the national language or one of the national languages. But the Court argued that this provision does **not** entail any right of parents which must be respected by the State to the instruction in a language **other than that of the country in question**. To compel a child to learn thoroughly a language which is not his or her own, cannot be termed an act of "depersonalization".
According to the Court, Art. 8 para. 1 of the ECHR, on its own, guarantees neither a right to education nor an independent right of parents in the area of the education of their children. Instead, it only protects the individual against arbitrary acts of intervention of the public authorities into his or her private and family life. However, this right can also be violated if children are arbitrarily removed from their parents as the result of state measures taken in the school system. The French-speaking children who lived in the Dutch region could, in fact, only receive instruction in Dutch, unless their parents had the means to send them to

nonsubsidized, French-language private schools. In as far as the legislation prompts some parents to separate themselves from their children in order to allow the latter to take part in French-language education at a public school or at a subsidized private school (school emigration), this certainly has effects on family life. But such a separation is not compelled by law; it results from the free choice of the parents involved. For this reason, the Court did not consider it to represent a violation of Art. 8 of the ECHR.

The Court further ruled that the distinctions with which the two national languages are treated in the two unilingual regions is also compatible with both Art. 2 of the First Protocol and Artt. 8 of the ECHR in conjunction with Art. 14 of the ECHR. The purpose of the laws on the use of language in the educational system (the language regime) aim at having all school institutions that are dependent on the State and are located in a unilingual region provide their instruction in the primary language of that region. This does not affect the freedom, independently of subsidized instruction, to give private instruction conducted in French. The means employed by the Belgian legislature for effectively implementing the legitimate goal of its language regime are also not disproportionate to the requirements of the public interest pursued.

The Court held that the ban on discrimination (the first sentence of Art. 2 of the First Protocol in conjunction with Art. 14 of the ECHR) was not breached by the legal regulations according to which diplomas from secondary schools that did not conform to the language provisions of the educational system would not be homologated. By adopting the controversial system, the legislator pursued an aim in the public interest: to contribute to the linguistic unity within the unilingual regions and to promote, especially among children, in-depth knowledge of the usual language of the region. Unequal treatment generally results from a distinction in the administrative regime of the attended institutions: the schools whose diplomas could not be homologated are not subject to the supervision of any State school authorities. Since, aside from this, the holder of a non-homologated degree receives official recognition of his or her studies by submitting to the Central Board, the exercise of the right to education is not impaired in a discriminatory way in the sense of Art. 14.

3. THE RIGHT TO USE ONE'S LANGUAGE:

4. THE RIGHT TO USE ONE'S LANGUAGE IN RELATIONS WITH PUBLIC AUTHORITIES:

Jurisprudence:

A p.3 Special considerations apply to the use of languages. A right to the use of a particular language in contacts with the authorities is not generally guaranteed, but "language" is also one of the grounds on which discrimination is prohibited under Article 14. This may be of importance in particular where the exercise of procedural rights recognised by the Convention is concerned, i.e. in the areas of Articles 5, 6 and 13. However, it appears that here Article 14 cannot be given full effect since Articles 5 and 6 contain special provisions on the use of language. They concern information on grounds of detention (Article 5 para. 2) or criminal charges (Articles 6 para. 3a) and interpretation at criminal trials (Article 6 para. 3e). As regards proceedings on civil rights, similar criteria might apply on the basis of Article 6 para. 1 (cf. No. 9099/80, X v. Austria, D.R. 27 p. 209). Now, the criterion underlying the above provisions is that the person concerned does not understand the language of the proceedings

and not that the proceedings are conducted in another language than his mother tongue. No distinction is being made in this respect between members of a (linguistic) minority and other persons. All can only demand the use of a language which they understand. Since the provisions in question are being regarded as leges speciales in relation to Article 14, a member of a minority who understands the official language cannot complain on the basis of Article 14 that, unlike members of the majority, he is not entitled to the use of his own language on these occasions (cf. No. 808/60, Isop v. Austria, Dec. 8.3.62, Yearbook 5 p. 108, see also Luedicke, Belkacem and Koc, judgment of 28 November 1978, Series A no. 29, Brozicek judgment of 19 December 1989, Series A no. 167, and Kamasinski judgment of 19 December 1989, Series A no. 168).

B p.48 Article 10 para. 1 of the ECHR does not ensure any right to "linguistic freedom", i.e., the provision does not guarantee the right to employ the language of one's choice, especially one's native language, vis-à-vis administrative authorities and in court:

A p.7-9 In several cases the Commission denied that a right to "linguistic freedom" was enshrined in the Convention (cf. No. 808/60, Isop v. Austria, Dec. 8.3.62, Yearbook 5 p. 108) concerning the use of the Slovene language in a civil court procedure; No. 2332/64 v. Belgium, Dec. 7.10.66, Yearbook 9, p. 119 concerning the use of the Flemish language in a civil court procedure. In both cases the Commission considered it relevant that the legal provisions on court language were complied with and that the applicants had bilingual lawyers.

In three further cases it was considered whether a right to "linguistic freedom" could be derived from Article 9 (freedom of thought and conscience) or 10 (freedom of expression). This was clearly denied as the applicants were not prevented "from expressing their thoughts freely in the language of their choice". The Commission considered that the right claimed by the applicants to have "the imprint of their own personality and of the culture they acknowledge as their own, take first place among the factors conditioning the education of their children, in order that their children's thinking should not become alien to their own" was outside the scope of Articles 9 and 10 (cf. No. 1474/62, Inhabitants of Alsemberg and Beersel against Belgium, Dec. 26.7.63, Yearbook 6 p. 332; No. 1769/62, X and others v. Belgium, Dec. 26.7.63, Yearbook 6 p. 444, see also No. 2333/64, Inhabitants of Leeuw-St Pierre v. Belgium, Yearbook 8 p. 338) where the same principle was applied to use of languages in contact with the authorities).

The same principle was also confirmed in Application No. 10650/83 (Clerfayt, Legros and others v. Belgium, Dec. 17.5.85, D.R. 42 p. 212). This case concerned a ban on the use of the French language in certain municipal councils and public social service assistance centres. The Commission recalled that the only provisions that dealt with the use of languages were in Article 5 para. 2 and Article 6 para. 3 (a) and (e), and that the existence of these provisions would be incomprehensible if the Convention were intended to afford much wider protection to the right which the applicants alleged to have been violated, i.e; "the right to usee their mother tongue or usual language, which is also the language of their electors, for the purpose of speaking and voting in municipal assemblies". The Commission further stated the following:
" The municipalities in question lie within the Hal-Vilvorde administrative district and hence within the Dutch language region. It is true that they have a special status providing for the use of the French language in relations between the administration and the public and in

education. These arrangements are obviously intended to allow for the presence in these Greater Brussels municipalities of a large number of residents whose mother tongue or usual language is French. Even so, as declared by the Council of State, the language of the region is Dutch.
The Convention does not guarantee an elected representative's right to use the language of his choice for the purpose of speaking and voting in an assembly such as a municipal council or a C.P.A.S., which are public-law bodies. Participation in the proceedings of these assemblies is part of the autonomy accorded to municipalities and C.P.A.S.s. It therefor falls outside the context of a private-law activity.
It follows, then, that the protection of rights claimed by the applicants is beyond the scope of the Convention, particularly Articles 10 and 11.
As to the alleged discrimination, the Commission recalls that Article 14 prohibits such discrimination solely in respect of 'the enjoyment of the rights and freedoms set forth' in the Convention. It is clear from the foregoing that the 'discrimination' complained of does not affect any of the rights claimed by the applicants."

In the case of the Fryske Nasjonal Partij and others v. the Netherlands (No. 11100/84, Dec. 12.12.85, D.R. 45 p. 240) the principle was confirmed again, the Commission observing in particular that Articles 9 and 10 "do not guarantee the right to use the language of one's choice in administrative matters" and noting that the applicants had failed to demonstrate "that they were also prevented from using the Frisian language for other purposes". A particular problem in that case concerned the language in which the registration for election to Parliament should take place. In this respect, the Commission said the following:
"The Commission finds that nothing prevented the applicants from submitting a translation into Dutch of their request for registration of the name of the party and list of candidates respectively. Moreover, neither Article 3 of Protocol No. 1 to the Convention, nor any other provision of the Convention guarantees the right to use a particular language for electoral purposes. Consequently, the Commission is of the opinion that the applicants may not claim that their right to stand as a candidate for election was limited by the requirement that registration could only take place in Dutch."

In the case of Bideault v. France (No. 11261/84, Dec. 6.10.86, D.R. 48 p. 232) the Commission had to examine the question whether Article 6 para. 3 (d) and Article 14 of the Convention had been violated because a court refused to hear witnesses who wished to speak French. The Commission noted that the decision was based on a provision of the French Code of Criminal Procedure according to which the services of an interpreter should be called upon only if the accused or witness did not have a sufficient command of French, which was not alleged to be in the case. It observed that Article 6 para. 3 (d) did not guarantee a right of witnesses to speak in a language of their choice, and since the witnesses had not claimed that they were unable to speak French, the Commission also denied a violation of Article 6 para. 1 and of Article 14. (See also: K v. France, No. 10210/82, Decision of 7-12-1983, D.R. 35, p 203).

5. THE RIGHT TO SET UP CULTURAL AND EDUCATIONAL INSTITUTIONS:

Jurisprudence:

B p.47 - The right to religious freedom is supplemented and completed by the right to establish religious associations (it is a point of debate, however, whether the right to association in religious communities, since it is inseparably connected with the safeguarded practice of religion "in community with others", is to be derived from Art. 9 of the ECHR, or whether it is part of the general association provided in Art. 11 of the ECHR; here, see: decision of 15-10-1981, App. No. 8652/79, 26 Eur.Comm. H.R. Dec. & Rep. 89, at 90 ff.) and by the right of parents to ensure education of their children in conformity with their own religious and philosophical convictions even in the State school and educational system (Art. 2, sentence 2 of the First Protocol). This gives parents the right to withdraw their children from State-provided religious instruction if it goes against their religious convictions (see Kjeldsen, Busk Madsen and Pedersen v. Denmark, judgment of 7-12-1976, Eur. Ct. H.R. Series A No. 23, at 25 sec. 51).

C - In App. no. 17187/90, Decision of 8 September 1993, the Commission considered the following:
"The applicants contend that section 48 of the law of 16 November 1988 permits the State to give religious convictions priority over philosophical convictions, in that a religious belief alone enables the pupils invoking it to be exempted from the two courses."
" The Commission further observes that the convictions of parents, within the scope of Article 2 of Protocol No 1, imply convictions which are not contrary to education. Where the rights of parents do not uphold but oppose children's right to be educated, the latter take precedence (see mutatis mutandis No. 10233/83, Decision of 6 March 1984, D.R. 37 p. 105)."
"However, in making adherence to a religious belief the requirement for exemption legislator did not, as the applicants claim, favour freedom of religion over the other freedoms set out in Article 9 of the Convention. The Commission considers that the possibility of exemption from the two courses in question offered to the category of pupils who profess a religious belief is inherent in the obligation for States to respect religious or philosophical convictions. This being so, the Commission does not see to what extent the applicants' philosophical convictions could be offended by the legislator's decision to require their children to attend the course of moral and social instruction. The Commission refers in this connection to the Conseil d'Etat decision of 21 March 1990 which ruled that courses of moral and social instruction as prescribed by the law of 16 November 1988 should be centred on human rights education and organised in such a way as to ensure plurality of opinions. The Commission therefore concludes that the methods applied are in reasonable proportion to the aim pursued. It follows that the application is manifestly ill-founded and should be rejected in accordance with Article 27 para. 2 of the Convention."

C In App. no. 18748/91, Decision of 10 October 1994 the Commission stated the following:
"The applicants allege violation of Articles 9, 10 and 11 of the Convention. They complain of having been convicted under the Greek legislation stipulating that the use of private premises for gatherings, prayer and other functions of a religious nature requires the permission of a State authority. They contend that the legislation restricts the freedom of religion, expression and assembly in a manner incompatible with the demands of a democratic society.

In this respect the applicants further stress that the power to grant authorisation is vested, under the terms of law no. 1363/1938, in "a recognised ecclesiastical authority", namely the Greek Orthodox Church. Thus, their freedom to manifest their religion through worship, even on private premises, is made dependent on and subject to the discretionary oversight of another religion or denomination."

"With regard to the merits, the Government observe that all religions enjoy freedom in Greece and that it is not forbidden to build or put into operation places of worship for any denomination whatsoever, but that a purely formal system of prior authorisation applies."

"The Commission has conducted a preliminary examination of the arguments put forward by the parties. It considers that these questions raise issues of fact and law which cannot be resolved at the present stage of the proceedings but call for consideration of the merits. Consequently, this part of the application is not to be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention. The Commission also finds that the application is not inadmissible on any other grounds."

6. THE PROTECTION OF CULTURAL AND SCIENTIFIC HERITAGE:

7. THE RIGHT TO CHOOSE FREELY TO BELONG OR NOT TO BELONG TO A GROUP:

Jurisprudence:

A p.5 Article 14 of the Convention refers inter alia "to language", "national origin" and "association with a national minority" as grounds on which discrimination is prohibited. It is obvious that these terms overlap to a large extent, but there is hardly any case-law bearing on the definition of these terms. In most relevant cases the fact that a person belongs to a particular group of the population has been stated as a simple fact which did not raise questions under the Convention. It is, however, clear that linguistic groups in a State must not necessarily be minorities (cf. the various cases against Belgium) and that "national minorities" must not always be based on a linguistic criterion.

The latter question was addressed in No. 8142/78, D.R. 18 p. 88, concerning a linguistic census in Austria, where the applicant claimed to belong to the Slovene minority while not using the Slovene language. In that case the Commission did not exclude that membership of a national minority may also be based on other than linguistic criteria, i.e. ties of allegiance or personal choice. In the last analysis, however, this point was not regarded as decisive in the case at issue.

In any event "association with a national minority" seems to presuppose a personal element, as distinguished from delimitation of territorial jurisdiction within a State. Thus the Commission held in a case concerning the application of different tax-rates in England and Scotland that the existence of different legal jurisdictions in different geographical areas within the State did not as constitute discrimination within the meaning of Article 14, the differentiation made not being based on "association with a national minority". The Commission left open whether Scots might be regarded as such a minority (No. 13473/87, Dec. 11.7.88; cf. similar arguments in the Dudgeon judgment of 22 October 1981, Series A no. 45 concerning different treatment of homosexual acts in Northern Ireland and the rest of the U.K.).

8. RESPECT FOR CULTURAL IDENTITY:

Jurisprudence:

B p.42 - Minority groups can invoke Art. 8 of the ECHR in defense of the private lifestyle of their ethnic group: see G. and E. v. Norway (Case of Norwegian Lapps) Application Nos. 9278/81 and 9415/81, Decision of 3-10-1983, 35 Eur. Comm. H.R. Dec.& Rep. 30, at. sec. 2.

B p.44-45- Private lifestyle: Art. 8 of the ECHR can also be violated by not satisfying positive protective obligations. However, this positive obligation to safeguard rights, even in conjunction with Art. 14 of the ECHR, does not entail any concrete government obligations to subsidize or provide services on behalf of the private and family life of members of national minorities: see: Abdulaziz et al. v. UK, judgment of 28.5.1985, Eur. Ct. H.R. Series A No. 94) at 33 f. sec. 67.
Art. 8 of the ECHR does at least, in conjunction with Art.14 of the ECHR, prevent members of national minorities from being (arbitrarily) excluded from State subsidy measures and family-directed services.
On the other hand, if a Member State fails (adequately) to protect individuals from interference in their private and family lives by other individuals, this can be considered a Convention violation: see X and Y v. the Netherlands, judgment of 26-3-1985, Eur.Ct.H.R. (Series A No. 91) at 11 sec. 23: " These (positive) obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of relations of individuals among themselves".
In this way, members of national minorities are also indirectly legally protected under Art. 8 of the ECHR from governmentally tolerated persecution, pogroms, and expulsion by the majority population. Moreover, in so far as such attacks from third parties impair not only their private and family lives but also threaten their lives through the use of violence, this falls under the protective obligation of the State according to Art. 2 para. 1 sentence 1 of the ECHR: see Decision of 28-2-1983, App. No. 9348/81,32 Eur.Comm. H.R.Dec.& Rep. 190, at 192 f. secs. 11 f.
However the concept of "security" in the "right to security" spoken of in Art. 5, para. 1 of the ECHR lacks any independent meaning and is only to be understood in the sense of legal security: see Decision of 20-7-1973, App. No. 6040/73, 44 Eur. Comm. H.R. Dec. & Rep. 121, at 122. It cannot provide the basis for claims by individuals vis-à-vis the State to protection in the case of acts of persecution by private or political organizations against certain population groups or to protect against attacks on public streets or in public places.

A p.11 - Special protection of minorities in national law:
Several cases decided by the Commission concerned special protection of particular minorities under national law and resultant restrictions on the freedom of expression of persons not belonging to those minorities. The Commission considered such restrictions as justified under Article 10 para. 2 of the Convention (cf. No. 9235/81, X. v. Federal Republic of Germany, Dec. 16.7.82, D.R. 29 p. 194, and No. 11001/84, Felderer v. Sweden, Dec. 1.7.85, both concerning antisemitic remarks).
In one case the issue was alleged insufficient protection by the law against defamatory remarks concerning gypsies. The Commission did not exclude that the alleged lack of protection against statements of that sort could raise an issue under Article 8 of the Convention, but considered that in the particular circumstances (where the author had

subsequently published a rectification and had explained that he had in no way intended to discriminate against a particular ethnic group, and where the authorities had also accepted that the use of the term "Zigeuner" in the previous publication was inconsiderate and regrettable) there had been no interference with applicants' rights (No. 12664/87, Zentralrat deutscher Sinti and others v. Federal republic of Germany, Dec. 2.5.88).

C - Östergen and others vs. Sweden, Commission Decision of 1 March 1991, Application No. 13572/88 (Annex 37):
In this case, three members of the Sami community in Northern Sweden were prosecuted before the District Court for letting their reindeer graze illegally on the land of the Sami village in 1981 and 1982. One of the applicants was also sentenced to one month's imprisonment for unlawful elk hunting on that land. Under Swedish law, a Sami village (sameby) is a special unit having a territory of its own where reindeer grazing rights as well as hunting and fishing rights are in principle reserved for the members of the village.
The applicants claimed that they were holders of hunting and fishing rights by reason of immemorial usage (urminnes hävd). They also considered themselves as members of the Vapsten Sami village, in whose territory their forefathers had lived for generations. However, their membership was not accepted, and by letter of 1 September 1982 they had been informed by the Agricultural Committee of the County that they had no land rights.
The applicants complained, inter alia, that the effect of the Swedish Court of Appeal's decision was to enforce against them a closed shop of reindeer farming under the Sami village contrary to Article 11. In their view, membership of the Sami village in question cannot override their traditional and immemorial hunting rights.
In this respect, the Commission stated that the Sami village was not a private organisation but rather an institution created by legislation and that the 1971 Swedish Reindeer Herding Act regulates membership of the Sami village. Such institutions of public law cannot be considered as associations in the sense of Article 11. The application was therefore declared inadmissible.

C - In App. no. 16278/90, Decision of 3 Mai 1993, the Commission stated the following:
"Before the Commission, the applicant complains of interference with her freedom of thought, conscience and religion contravening Article 9 of the Convention, in that her diploma was withheld for two years for failure to provide an identification photograph showing her bareheaded, a style of dress which was contrary to the manifestation of her religious convictions."
"The Commission recalls that Article 9 of the Convention expressly protects the manifestation of religion or belief "in worship, teaching, practice and observance".
The Commission has already decided that Article 9 of the Convention does not invariably cases secure the right to behave in public in a manner determined by one's belief. In particular, the term "practice" as employed in Article 9 para. 1 does not cover each act which is motivated or influenced by a religion or a belief (cf. No. 7050/75 Arrowsmith v. United Kingdom, Comm. Report para. 71, D.R. 19 p. 5 and No. 10358/83, Decision of 15 December 1983, D.R. 37 p. 142). In order to establish whether this provision was violated in the instant case, it must first be ascertained whether the measure at issue constituted interference with the exercise of freedom of religion."
"The Commission considers that by electing to undergo their further education in a secular university, students place themselves under that university's regulations. These may subject students' freedom to manifest their religion to limitations of place and form so as to ensure

the intermingling of students of different creeds. Most significantly, in countries the great majority of whose population belong to a specific religion, manifestation of that religion in worship, teaching, practice and observance without limitation of place and form can bring pressure to bear on students who do not practise that religion or who profess another. Secular universities, where they lay down disciplinary rules in respect of students' dress, can ensure that certain religious fundamentalist tendencies do not interfere with the belief of others.
The Commission notes that in the instant case the university's regulations on dress require students, inter alia, to refrain from wearing headscarves. The Commission also takes into account the observations of the Turkish Constitutional Court, which holds that the wearing of the Islamic scarf in Turkish universities may constitute a provocation to non-wearers.
The Commission recalls that it deemed compatible with the freedom of religion secured by Article 9 of the Convention the obligation placed on a teacher to observe working hours which, he claimed, coincided with his hours of prayer. (No. 8160/78, X. v. United Kingdom, Decision of 12 March 1981, D.R. 22 p. 27). The same applies to the crash helmet requirement imposed on a motorcyclist which, he claimed, conflicted with his religious obligations (No. 7992/77, X. v. United Kingdom, Decision of 12 July 1978, D.R. 14 p. 234). The Commission considers that student status in a secular university of itself entails compliance with certain rules of conduct laid down to ensure respect for the rights and freedoms of others. The regulations of a secular university can also provide that the diploma awarded to students shall in no way reflect the identity of any movement with a religious inspiration to which students may belong.
The Commission also takes the view that a university diploma is intended to certify a student's professional aptitude and is not a document for disclosure to the public at large. A photograph affixed to a diploma is meant to identify the holder, who must not use it to display his religious convictions."
"In these circumstances the Commission considers, having regard to the requirements of the secular higher education system, that control of students' dress and denial of administrative services, for example the award of a diploma, as long as they defy the rules in that respect, does not as such constitute interference with freedom of religion and conscience.
The Commission therefore discerns no interference with the right secured by Article 9 para. 1 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 27 para. 2 of the Convention." (See also: App. no. 18783/91, Commission Decision of 3 Mai 1993; this case is the same as the previous one except for one point: "The Commission also takes account of the fact that the applicant holds a graduation certificate which affords all the benefits of a diploma.")

C - Hoffmann v. Austria, judgment of 23 June 1993, Series A no. 255-C:
Mrs Hoffmann, Jehova's Witness, complained (after her divorce) that she had been denied custody of the children on the ground of her religious convictions.
"The European Court therefore accepts that there has been a difference in treatment and that difference was on the ground of religion; this conclusion is supported by the tone and phrasing of the Supreme Court's considerations regarding the practical consequences of the applicant's religion."
"In so far as the Austrian Supreme Court did not rely solely on the Federal Act on the Religious Education of Children, it weighed the facts differently from the courts below, whose reasoning was moreover supported by psychological expert opinion. Notwithstanding any

possible arguments to the contrary, a distinction based essentially on a difference in religion alone is not acceptable.
The Court therefore cannot find that a reasonable relationship of proportionality existed between the means and the aim pursued; there has accordingly been a violation of Article 8 taken in conjunction with Article 14."

C - In App. no. 18877/91, Decision of 1 July 1994, the Commission stated the following:
"The applicant also complains that his conviction for disrupting public peace, by distributing printed material referring to the Moslem population of Western Thrace as "Turks", amounts to a violation of his freedom of thought, expression and assembly, and is discriminatory. He invokes Articles 9, 10, 11 and 14 of the Convention, which guarantee these freedoms and prohibit discrimination respectively."
"The applicant does not dispute the existence of a legal basis for his conviction, but maintains that the conviction and punishment inflicted upon him were without any legitimate purpose under the Convention and alleges that they constituted a kind of reprisal for his assertion of his Turkish ethnic origin. He also maintains that his conviction and the penal sanctions inflicted upon him were not necessary in a democratic society."
"The Commission considers that the applicant's complaints, that his conviction for disrupting public peace amounts to a violation of his rights under the Convention, raise complex issues of fact and law, the determination of which should depend on a full examination of the merits."

C - In App. nos. 22902/93 and 23442/94, Decisions of 12 October 1994, the Commission stated the following:
"The applicants complain that they are prevented from living with their family in caravans on their own land and from pursuing their traditional way of life as a gypsies. They invoke Article 8 of the Convention and Article 14 of the Convention (...)."
"The applicants complain of a violation of their rights under Articles 8 and 14 of the Convention. They are subject to pressure to leave their own land but will face criminal sanctions if they move on to public or unoccupied land. There are no suitable available places on public sites, there being an acknowledged shortfall of sites for gypsies in the area. The measures to which they are subjected are, it is submitted, draconian, severely discriminatory and disproportionate. These factors operate cumulatively to put pressure on gypsies to abandon their traditional lifestyle of a gypsy and render such lifestyle practically impossible.
The Commission has taken cognizance of the submissions of the parties. It considers that the applicants' complaints raise serious issues of fact and law under the Convention, the determination of which should depend on an examination of the merits. It follows that the application cannot be dismissed as manifestly ill-founded. No other ground for declaring it inadmissible has been established." (See also App. no. 20348/92, Commission Decision of 3 March 1994).

C App. No. 21787/93, Commission Decision of 29.11.94:
The applicants are Jehova's Witnesses. In 1992 the first two applicants asked for their daughter, the third applicant, to be excused from attending classes on Orthodox religion, as well as any demonstration contrary to their religious convictions, including participation in national fêtes and public processions. The third applicant was suspended from school for one day after she refused to participate in a school parade on 28 October, a public holiday commemorating a war victory.

Held: Article 2 of Protocol No. 1 and Article 9 (the leges speciales in relation to Articles 8 and 14), and Article 3 (same facts): admissible.
Article 13: admissible.

9. PERMANENT ADULT EDUCATION:

10. INTELLECTUAL PROPERTY:

11. THE RIGHT OF ACCESS TO INFORMATION AND TO IMPART INFORMATION:

DH-MM (94) 1; Council of Europe activities in the media field, Directorate of Human Rights, Strasbourg 1994,
p. 10 para 24:

The Committee of Ministers has also examined the question of whether Article 10 of the European Convention on Human Rights which - contrary to the corresponding Article 19 (2) of the International Convention on Civil and Political Rights does not specifically mention the right to seek information - should be amended to that effect. But a consensus has emerged, on the strength of views expressed by the European Court of Human Rights, that this right is already implicit in Article 10. The Declaration of 29 April 1982 of the Committee of Ministers on Freedom of Expression and Information (...) is of primary significance for the promotion of freedom of information policies at the national and international levels.

Declaration on the Freedom of Expression and Information adopted by the Committee of Ministers on 29 April 1982, at their 70th session:

The member states of the Council of Europe,
(...)
4. Considering that the freedom of expression and information is necessary for the social, economic, cultural and political development of every human being, and constitutes a condition for the harmonious progress of social and cultural groups, nations and the international community;
(...)
II Declare that in the field of information and mass media they seek to achieve the following objectives:

a. protection of the right of everyone, regardless of frontiers, to express himself, to seek and receive information and ideas, whatever their source, as well as to impart them under the conditions set out in Article 10 of the European Convention on Human Rights;
(...)

c. the pursuit of an open information policy in the public sector, including access to information, in order to enhance the individual's understanding of, and his ability to discuss freely political, social, economic and cultural matters;
(...).

Jurisprudence:

DH-MM (94) 8; Case law concerning article 10 of the European Convention on Human Rights: Directorate of Human Rights, Strasbourg 1994;
p. 24, 25:

Access to information

In the **Leander** case concerning Sweden (European Court of Human Rights, Leander judgment of 26 March 1987, Series A No. 116), the applicant complained that the Swedish authorities kept secret information on him which was not disclosed to him on grounds of national security. In its judgment the Court concluded that there had been no violation of Article 10.

The Court concluded in July 1989 that there had been no violation of Article 10 in the **Gaskin** case concerning the United Kingdom (Gaskin judgment of 7 July 1989, Series A No. 160). This case deals with an application against a refusal to communicate to the applicant a case-record which had been established when he was a minor by the local authority to which he had been entrusted.

As to restrictions on access to information, the Commission examined in March 1987 two applications regarding restrictions imposed - by virtue of the 1981 British legislation on contempt of court - on reporting of criminal proceedings of importance for the public by the applicants (namely, a journalist, a production company, a journalists' union and a television channel). The Commission declared these applications inadmissible under Article 10 (No. 11553/85, G.M.T. Hodgson, D. Woolf Productions Ltd and National Union of Journalists v. United Kingdom, Decision of 9 March 1987 and No. 11658/85, Channel 4 Television Co Ltd v. United Kingdom, Decision of 9 March 1987, D.R. 51, p. 136).

In a broader context, numerous applications lodged with the Commission have come from prisoners on whom restrictions or prohibitions have been imposed, in particular as regards access to publications or to the mass media. In most cases, the Commission has considered such restrictions to be inherent in the lawful deprivation of liberty and therefore not contrary to the Convention.

C The Commission declared inadmissible the application of association des chausseurs et pêcheurs de la Bidassoa v. France (No. 23832/94, Decision of 2 December 1994) concerning the claim by the applicant association, based in Spain, that it should have been informed beforehand, under additional provisions to treaties defining the French-Spanish border, of an agreement whereby the Prefect of the Pyrenées-Atlantiques authorised the commune of Hendaye to dyke up part of the Bidassoa river, which divides France and Spain. The Commission held, as regards Article 10, that there is no obligation on States to provide

information to persons abroad about administrative acts on its own territory, and in any event, since the development was publicised in France, the applicant, whose aim is to protect the river, could not reasonably maintain that it could not obtain information about the agreement (manifestly ill-founded).

12. OTHER POSSIBLE AREAS:

A p.2 - General observations:

The scope of applicability of Article 14 is determined by the scope of the other Convention Articles. It should be noted that many matters which might be of particular importance for national minorities have been found to be outside the ambit of the Convention. They include inter alia: the right to nationality, the right to personal documents, the right of access to the public service, the right of elections to non-legislative bodies, the right to work, freedom of profession and establishment and the right to (non-contributory) social benefits. Accordingly, discrimination with regard to these matters cannot be made a subject of complaint to the Convention organs (cf. Digest of Strasbourg case law, Vol. 4, p. 47 ff. for a list of cases concerning matters outside the scope of the Convention).
It should further be noted that in the case of States which have not ratified the Protocols to the Convention, discrimination cannot be alleged concerning the rights enshrined in these Protocols. This might affect such importance rights as:

- the right to property (Protocol No. 1, Article 1);
- the right to education (Protocol No. 1, Article 2);
- the right to free elections (Protocol No. 1, Article 3);
- the right to freedom of movement (Protocol No. 4, Article 2);
- the prohibition of the expulsion of nationals (Protocol No. 4, Article 3);
- the prohibition of the collective expulsion of aliens (Protocol No.4, Article 4).

COEMIN Sept. 1994 p.23 In a number of instances, the Commission has stated that "the Convention does not guarantee specific rights to minorities": No. 8142/78, D.R. 18,88. Similarly there is no right to self-determination: No. 6742/74, D.R. 3, 98 (Germans formerly living in Czechoslovakia), No. 7230/75, D.R. 7, 109 (concerning the autochthonous population of Surinam).

B p.41 -Forced expulsion and relocation also fall under the protective scope of Art. 8 para. 1 of the ECHR (home/family): see Cyprus v. Turkey 19-9-1974, App. Nos. 6780/74 and 6950/75, 18 Yearbook 82 (1975).

A p.11 - Persecution of minorities in non-member States: In its case-law concerning the examination of expulsions under Article 3 of the Convention, the Commission has repeatedly dealt with cases in which inhuman treatment of the persons concerned was to be feared because of their belonging to particular minority groups (cf. in particular cases on the expulsion of Tamils to Sri Lanka, Nos. 13163/87 - 13165/87, Vilvarajah and others v. U.K., judgement of 30 october 1991, Series A no. 215, and Nos. 17550/90 and 17825/91, V and P v. France, Series A no.

241-B; cf. also the cases of Bulus and Mansi v. Sweden which were settled before the Commission (No. 9330/81, Comm. Report 8.12.84; No. 15658/89, Comm. Report 9.3.90).

B p.51 - Art. 3 of the Fourth Protocol does not offer protection against denaturalization, i.e., the deprivation of one's citizenship.

A p.10 - Personal documents: In the case of the Kalderas gypsies (No. 7824/77, Dec. 6.7.77, D.R. 11 p. 221) the Commission considered that a refusal to deliver identification papers to members of a nomadic group may raise issues under Articles 3 and 14 of the Convention and, concerning birth certificates, also Article 8 of the Convention. The case was however rejected for non-exhaustion of domestic remedies.

A p.9 - Art. 3 of protocol No. 1: democratic representation of minorities: The right of Art. 3 of Protocol No. 1 is limited to the election of the "legislature" and it does not include elections to non-legislative bodies such as municipal councils and therefor no question of discrimination can arise in relation to such elections (cf. Cleyrfayt, Legros and others v. Belgium, judgement of 2-3-1987, series A no. 113).
The right to a separate representation of minorities in legislative bodies is not as such guaranteed (cf. Nos. 9278/81 and 9415/81, Dec. 3-10-83, D.R. 35,30; X v. Norway). The Commission considered that non-representation of minorities in legislative bodies established according to linguistic criteria does violate Art. 3 of Protocol No. 1 (No. 9267/81, Mathieu-Mohin and Clerfayt v. Belgium, Comm.Report 15-3-1985, in particular paras. 106 ff), but the Court in its judgement of the same case denied a violation of both Art. 3 of the Protocol and Art. 14 of the Convention. It considered that: "The French-speaking electors in the district of Halle-Vilvoorde enjoy the right to vote and the right to stand for election on the same footing as the Dutch-speaking electors. They are in no way deprived of these rights by the mere fact that they must vote either for candidates who will take the parliamentary oath in French and will accordingly join the French-language group in the House of Representatives or the Senate and sit on the French Community Council, or else for candidates who will take the oath in Dutch and so belong to the Dutch-language group in the House of Representatives or the Senate and sit on the Flemish Council. This is not a disproportionate limitation such as would thwart 'the free expression of the opinion of the people in the choice of the legislature'". (Judgement of 2 March 1987, Series A no. 113, paras. 57 and 59).
Similarly the case of the Fryske Nasjonale Partij and others (No. 11100/84), the Commission did not see a disproportionate restriction of the right to free democratic elections in the fact that the registration of candidates was required in the majority language.

A p.10,11- Different treatment of organizations: In the inter-State case of Ireland v. the UK, the Court examined inter alia the question of alleged discrimination between Loyalist and republican terrorism, but found the difference of treatment justified by the circumstances (judgment of 18 January 1978, Series A no. 25, paras. 86 ff.).
Similarly, in the case of Rassemblement jurassien and Unité jurassienne v. Switzerland (No. 8191/78, Dec. 10.10.79, D.R. 17 p. 93) the Commission did not find any appearance of discriminatory treatment between separatist and antiseparatist demonstrations with regard to the right of freedom of assembly (Article 11).

C - Art 10 of the ECHR: broadcasting:

In the case of Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland (Decision of 16-10-1986, App. No. 10746/84, 49 D&R 126) the Commission considered that "refusal to grant a broadcasting licence may raise a problem under Article 10, in conjunction with Article 14 of the Convention in specific circumstances. Such a problem would arise, for example, if the refusal to grant a licence resulted directly in a considerable proportion of the inhabitants of the area concerned being deprived of broadcasts in their mother tongue". And "(...) the foreign language populations of the cities of Basel and Berne are effectively able to receive programmes in their mother tongue, broadcast by private stations, the SSR or foreign stations". (See also: Decision of 12 July 1971, App. No. 4515/70, 14 Y.B. Eur.Conv. on H.R. 538 ff., at 544 ff. (1971) (Eur. Comm. on H.R.).

In the case of Informationsverein Lentia and others v. Austria (judgement of 24-11-1993, Series A no. 276) the Court examined the question whether the refusal to grant licences for private radio stations because of the existence of a State broadcasting monopoly was compatible with Article 10 of the Convention. One of the applicants, a private association which intended to set up a multicultural private radio station in an area where part of the population belongs to a linguistic minority, also complained in this context that minorities were not sufficiently represented, and their interests were not appropriately taken care of in the context of the broadcasting monopoly. The Court stressed the importance of the principle of pluralism in relation to audio-visual media and considered that the Austrian public monopoly was disproportionate and not necessary in a democratic society, and therefore a violation of Article 10 of the Convention. This finding made it unnecessary for the Court to determine whether there had also been a breach of Art. 14, taken in conjunction with Art. 10 of the Convention.