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REVIEW OF DEVELOPMENTS IN STANDARDS, MECHANISMS AND CASE LAW

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REVIEW OF DEVELOPMENTS IN STANDARDS, MECHANISMS AND CASE LAW

1. There have been many developments of note relating to standards, mechanisms and case law that are relevant to the mandate of the Expert Council since 30 August 2010, the cut-off date for the previous review and the principal ones are summarised in the paragraphs that follow.

A Standards

2. The first development to note is that the European Union has recommended the following principles in a Ministerial Council draft decision as means of supporting the exercise of the right to freedom of association:.

> First principle: Any laws and administrative measures regulating association should protect and facilitate, not impede, the peaceful operation of associations and be enforced in a neutral, fair, prompt, inexpensive, transparent and consistent manner; registration procedures for associations, when existing, including any sanctions for their violation, should never unduly restrict the freedom of expression, peaceful assembly or association;
> Second principle: If there is a requirement of notification, the proof of notification should be systematically delivered; any refusal of registration should be based on clear legal grounds communicated within a reasonable time, and be properly motivated; appeal mechanisms against such decisions need to be accessible and effectively implemented; in the absence of a formal justified refusal of registry within a specific reasonable time, the organisation should be considered as legally registered;
> Third principle: The field of action of organisations should not be restricted or limited in law or in practice, other than for duly justified reasons;
> Fourth principle: Orders of dissolution of an organisation, if they are necessary in a democratic society, need to be proportional, taken on the basis of limited and duly justified motivations, under scrutiny of the judiciary and must be subject to appeal; access to an effective remedy against restrictions to the freedom of association should be provided;
> Fifth principal: The criminal, civil legal actions or administrative procedures brought by governments against organisations, should be based on tenets of due process, fair trial and equality before the law;
> Sixth principle: Organisations should be permitted to seek, receive, manage and administer for their peaceful activities financial support from domestic, foreign and international entities without undue restrictions;
> Seventh principle: Organisations and individuals associated with organisations should be free to maintain contact and co-operate with members of these organisations and other elements of civil society within and outside the countries where they are based, as well as with governments and international bodies;
> Eighth principle: public authorities should not seek to interfere into the management of private organisations[1].

3. These principles undoubtedly paraphrase the essence of Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Recommendation CM/Rec(2007)14) but are nonetheless a welcome reaffirmation of the fundamentals that should be respected in any regulation of the exercise of the right to freedom of association.

[1] Reference PC.DEL/960/12, circulated on 29 October 2012.

4. In addition, there have been three developments at the United Nations level and three also within the Council of Europe, all of which note the important contribution to be made by non-governmental organisations but some of which identify important challenges to their operation and the need for these to be tackled.

5. The developments within the United Nations concern three resolutions adopted by the Human Rights Council.

6. In the first resolution, The rights to freedom of peaceful assembly and of association, the Human Rights Council:

> 3. *Emphasizes* the critical role of the rights to freedom of peaceful assembly and of association for civil society, and recognizes that civil society facilitates the achievement of the purposes and principles of the United Nations;
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> 4. *Stresses* that respect for the rights to freedom of peaceful assembly and of association, in relation to civil society, contributes to addressing and resolving challenges and issues that are important to society, such as the environment, sustainable development, crime prevention, human trafficking, empowering women, social justice, consumer protection and the realization of all human rights[2].

7. Secondly, in its resolution Protecting human rights defenders, the Human Rights Council, amongst other points:

> 8. *Calls upon* States to respect, protect and ensure the right to freedom of association of human rights defenders and, in this regard, to ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law;
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> 9. *Also calls upon* States:
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> (*a*) To ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy;
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> (*b*) To ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration referred to in paragraph 3 above, other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto;
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> ...
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> 15. *Reaffirms* the necessity for inclusive and open dialogue between civil society actors, particularly human rights defenders, and the United Nations in the field of human rights and, in this context, underlines that participation by civil society should be facilitated in a transparent, impartial and non-discriminatory manner;
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> ...
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> 17. *Stressing in particular* the valuable contribution of national human rights institutions, civil society and other stakeholders in providing input to States on the potential implications of draft legislation when such legislation is being developed or reviewed to ensure that it is in compliance with international human rights law[3].

8. Finally, in the third of its resolutions, Civil society space: creating and maintaining, in law and in practice[4], a safe and enabling environment, the Human Rights Council

> 1. *Reminds* States of their obligation to respect and fully protect the rights of all individuals to, inter alia, freedom of expression and opinion, and to assemble peacefully and associate freely, online as well as offline, including for persons espousing minority or dissenting views or beliefs, and that respect for all such rights, in relation to civil society, contributes to

[2] 21/16 of 11 October 2012.
[3] A/HRC/RES/22/6, 12 April 2013.
[4] A/HRC/24/L.24, 23 September 2013.

addressing and resolving challenges and issues that are important to society, such as in the promotion of the rule of law and accountability, the environment, development, empowering persons belonging to minorities and vulnerable groups, racism and racial discrimination, crime prevention, corporate social responsibility and accountability, human trafficking, empowering women and youth, social justice, consumer protection and the realization of all human rights;

2. *Recognizes* the important role of civil society, at all levels, in providing assistance during financial and economic crises and in humanitarian crises, including armed conflict, natural disasters and man-made disasters, as well as during the stages of recovery, relief and rehabilitation, and also in the realization of transitional justice goals and in the reconstruction of society, and that the active participation of civil society can reinforce ongoing governmental efforts to protect human rights and fundamental freedoms while countering terrorism;

3. *Urges* States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity;

4. *Also urges* States to acknowledge publicly the important and legitimate role of civil society in the promotion of human rights, democracy and the rule of law, and to engage with civil society to enable it to participate in the public debate on decisions that would contribute to the promotion and protection of human rights and the rule of law and of any other relevant decisions;

5. *Urges* all non-State actors to respect all human rights and not to undermine the capacity of civil society to operate free from hindrance and insecurity;

6. *Emphasizes* the essential role of civil society in subregional, regional and international organizations, including in support of the organizations' work, and in sharing experience and expertise through participation in meetings, in accordance with relevant rules and modalities, and, in this regard, reaffirms the right of everyone, individually and in association with others, to unhindered access to and communication with subregional, regional and international bodies, in particular the United Nations, its representatives and mechanisms;

7. *Encourages* human rights mechanisms, including the special procedures, as appropriate, in the framework of their existing mandates, to continue to address relevant aspects of civil society space;

8. *Welcomes* the work of the Office of the United Nations High Commissioner for Human Rights to promote and protect civil society space, and invites it to continue efforts in this regard;

9. *Decides* to organize, at its twenty-fifth session, a panel discussion on the importance of the promotion and protection of civil society space, which will, inter alia, contribute to the identification of challenges facing States in their efforts to ensure space for civil society and lessons learned and good practices in this regard, and invites the Office of the High Commissioner to liaise with States, relevant United Nations bodies and agencies, relevant special procedures, civil society and other stakeholders with a view to ensuring their participation in the panel discussion.

9. The first of the three instruments adopted within the framework of the Council of Europe is Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity[5], in which the following specific provisions concerning freedom of association can be found:

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to

[5] 31 March 2010

> which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.
> 12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

10. The two other developments in the Council of Europe are concerned particularly with the contribution to be played by NGOs in tackling major social problems.

11. The first is the adoption of the Council of Europe Convention on preventing and combating violence against women and domestic violence[6], which makes specific reference to civil society organisations and NGOs in two of its provisions.

12. Thus Article 7 requires parties to the Convention to

> take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women

and provides that the measures taken pursuant to this article shall involve

> where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

13. In addition Article 9 – which is headed 'Non-governmental organisations and civil society' provides that

> Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

14. The second of these developments is the adoption by the Parliamentary Assembly of Resolution 1910(2012) on NGOs' role in combating intolerance, racism and xenophobia in which the Assembly stated that it regarded NGOs as the natural allies of parliaments in the performance of their function of oversight, prevention and awareness raising in this matter. The Resolution thus stated that it was 'indispensable to take measures to support and promote NGOs' action in order to refine policies and legislation in the area of racism and xenophobia, and ensure that the point of view of minority groups is taken into account in their preparation, implementation and monitoring'[7].

15. Furthermore, the Assembly recommended that member and observer States, and parliaments in particular,

> in conjunction with the qualified NGOs, take measures to:
> promote the knowledge of different cultures and traditions, including those of minority groups, by providing positive models or success stories that show the positive contribution of minorities in society;

[6] Adopted on 11 May 2011. It requires 10 ratifications to enter into force and so far has been ratified only by Albania, Italy, Montenegro, Portugal and Turkey.
[7] Paragraph 3

promote equality in a multicultural society; establish and develop structures for dialogue in which NGOs and public institutions participate on an equal footing;
give qualified NGOs a consultative function vis-a-vis public institutions to advocate, in the light of their expertise, specific policy measures for preventing and combating intolerance, racism and xenophobia;
alert civil society to the rise of these phenomena and mobilise it to prevent and combat them, by organising public campaigns on a national or European scale;
ensure the application of the relevant measures and legislation;
develop youth policies aimed at eradicating discrimination and exclusion;
encourage the media to give minorities the possibility to make their voices heard and build up their media capacity in civil society;
encourage and support NGOs in their actions aimed at
ensuring liaison with local and regional authorities,
monitoring, documenting and denouncing discrimination,
prevailing upon the authorities to tackle intolerance, racism and xenophobia through appropriate laws and measures,
monitoring the actions of the public institutions in this field,
enhancing their qualifications and capacity to act as a source of information for monitoring structures such as ombudspersons and equality advocacy bodies,
supporting victims of discrimination in their access to justice by providing them with advice and legal representation,
empowering groups to engage in campaigns, to be their own advocates and to assert and enforce their rights,
informing minorities of the relevant legal framework for the defence of their rights and developing communication strategies to make the voice of minorities heard in the media and provide journalists with consistent and reliable information, in order to combat hostility to refugees and asylum seekers, Islamophobia, anti-Gypsyism and anti-Semitism[8].

16. In addition, the Assembly encourages the Secretary General of the Council of Europe 'to review and reinforce co-operation with international non-governmental organisations, and namely to propose implementing agreements for the instruments already in existence against discrimination, racism and intolerance with the competent Council of Europe directorates and organs in order to provide solutions to specific situations and further the culture of participation in the member States'.

17. Both these developments will undoubtedly help to facilitate the contribution that can be made by NGOs in tackling violence against women, domestic violence, racism and xenophobia. This is the sort of contribution that was recognised in the Preamble to Recommendation CM/Rec(2007)14[9], which laid down the essential standards for their operation and protection.

18. Finally, it should be noted that the Office for Democratic Institutions and Human Rights has also developed *Associationline.org*[10]**,** a web-based interactive guide to freedom of association for government authorities and civil society. This database provides direct access to key principles and international standards relating to freedom of association, with a special focus on non-governmental organizations. It brings together relevant jurisprudence and offers examples of good practices of legislation relating to non-governmental organizations from across the OSCE region.

[8] Paragraph 6.
[9] 'Aware of the essential contribution made by non-governmental organisations (NGOs) to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities, and of the equally important contribution of NGOs to the cultural life and social well-being of democratic societies'.
[10] http://associationline.org/

B Mechanisms

19. Although applications to the European Court of Human Rights and Communications to the United Nations Human Rights Committee provide an important source of protection for NGOs, especially those that are membership-based, an addition to this armoury has been made with the adoption by the United Nations Human Rights Council of Resolution 15/21 The rights to freedom of peaceful assembly and of association[11], in which it appointed a special rapporteur[12] on the rights to freedom of peaceful assembly and of association, whose tasks will include:

> (*a*) To gather all relevant information, including national practices and experiences, relating to the promotion and protection of the rights to freedom of peaceful assembly and of association, to study trends, developments and challenges in relation to the exercise of these rights, and to make recommendations on ways and means to ensure the promotion and protection of the rights to freedom of peaceful assembly and of association in all their manifestations;
> (*b*) To incorporate in his or her first report an elaboration of the framework, including seeking the views of States, through which the mandate holder will consider best practices, including national practices and experiences, that promote and protect the rights to freedom of peaceful assembly and of association, taking into account in a comprehensive manner the relevant elements of work available within the Council;
> (*c*) To seek, receive and respond to information from Governments, nongovernmental organizations, relevant stakeholders and any other parties who have knowledge of these matters, with a view to promoting and protecting the rights to freedom of peaceful assembly and of association;
> (*d*) To integrate a gender perspective throughout the work of the mandate;
> (*e*) To contribute to the provision of technical assistance or advisory services by the Office of the High Commissioner to better promote and protect the rights to freedom of peaceful assembly and of association;
> (*f*) To report on violations, wherever they may occur, of the rights to freedom of peaceful assembly and of association, as well as discrimination, threats or use of violence, harassment, persecution, intimidation or reprisals directed at persons exercising these rights, and to draw the attention of the Council and the High Commissioner to situations of particularly serious concern;
> (*g*) To undertake his or her activities such that the present mandate will not include those matters of specific competence of the International Labour Organization and its specialized supervisory mechanisms and procedures with respect to employers' and workers' rights to freedom of association, with a view to avoiding any duplication;
> (*h*) To work in coordination with other mechanisms of the Council, other competent United Nations bodies and human rights treaty bodies, and to take all necessary measures to avoid unnecessary duplication with those mechanisms

20. In the discharge of his mandate, the Special Rapporteur (a) transmits urgent appeals and letters of allegation to Member States on alleged violations of the rights to freedom of peaceful assembly and/or of association; (b) undertakes fact-finding country visits; (c) submits annual reports covering activities relating to the mandate to the Human Rights Council and to the General Assembly from 2013; and (d) engages publicly on issues of concern, including through press releases.

21. So far the Special Rapporteur has published the communications and his observations on them to the governments of seven Council of Europe member states relating to

[11] Adopted on 30 September 2010.
[12] Mr Maina Kiai.

freedom of observation[13], has undertaken fact-finding visits to Georgia and the United Kingdom[14] and submitted three reports.

22. In his first report to the Human Rights Council, the Special Rapporteur made the following specific recommendations relating to freedom of association:

> 95. A regime of notification to establish an association should be in force. Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court.
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> 96. Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment.
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> 97. Associations should be free to determine their statutes, structure and activities and to make decisions without State interference.
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> 98. Associations should enjoy the right to privacy.
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> 99. Associations should be able to access domestic and foreign funding and resources without prior authorization.
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> 100. Suspension or involuntarily dissolution of associations should be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law[15].

23. In his second report, the Special Rapporteur included the following conclusions and recommendations:

> 79. The Special Rapporteur considers the two issues discussed in the present report to be critical for the enjoyment of the rights to freedom of peaceful assembly and of association. He expresses serious concern that undue barriers to funding are put in place, especially in a climate of harassment and exclusion of civil society actors on one hand, and in the context of a global financial crisis on the other. It is crucial that civil society not bear any more restrictions and obligations than private corporate bodies, for instance, in these areas. In a framework of ongoing democratic reforms in several countries across the world and of discussions related to the post-2015 Millennium Development Goals Agenda, he believes States have the obligation to facilitate, not restrict, access for associations to funding, including from foreign sources, so that they can effectively take part in the democratic process and enrich post-Millennium Development Goals talks, and ultimately contribute to development.
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> ...
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> 81. As general recommendations, the Special Rapporteur calls upon States:
>
> (a) To create and maintain, in law and in practice, an enabling environment for the enjoyment of the rights to freedom of association and of peaceful assembly;
>
> (b) To ensure that any restriction complies with international human rights norms and standards, in particular in line with the strict test of necessity and proportionality in a democratic society, bearing in mind the principle of non-discrimination;
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> (c) To ensure that a detailed and timely written explanation for the imposition of any restriction is provided, and that said restriction can be subject to an independent, impartial and prompt judicial review;
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> (d) To ensure that sanctions for the non-respect of restrictions complying with international human rights norms and standards are proportionate and not set at a level that would deter individuals from exercising their right to freedom of association and/or of peaceful assembly;
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> (e) To ensure that those who violate and/or abuse the rights of individuals to freedom of association and of peaceful assembly are held fully accountable by an independent and democratic oversight body and by the courts of law.

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[13] Azerbaijan, Armenia, Cyprus, France, Hungary, Russian Federation and Turkey; see http://ap.ohchr.org/documents/dpage_e.aspx?m=189.

[14] For the resulting reports and the comments by the two States on them, see http://ap.ohchr.org/documents/dpage_e.aspx?m=189.

[15] A/HRC/20/27, 21 May 2012.

82. In relation to freedom of association, the Special Rapporteur calls upon States:
(a) To adopt a regime of notification for the formation of associations, and to allow for the existence of unregistered associations;
(b) To ensure that associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities;
(c) To recognize that undue restrictions to funding, including percentage limits, is a violation of the right to freedom of association and of other human rights instruments, including the International Covenant on Economic, Social and Cultural Rights;
(d) To recognize that regulatory measures which compel recipients of foreign funding to adopt negative labels constitute undue impediments on the right to seek, receive and use funding;
(e) To adopt measures to protect individuals and associations against defamation, disparagement, undue audits and other attacks in relation to funding they allegedly received[16].

24. The Special Rapporteur's third report, which was to the General Assembly of the United Nations, focused on elections and its conclusions and recommendations included the following:

58. The Special Rapporteur calls upon States in times of elections:
(a) To recognize that the rights to freedom of peaceful assembly and of association play a decisive role in the emergence and existence of effective democratic systems, as they allow for dialogue, pluralism, tolerance and broadmindedness, where minority or dissenting views or beliefs are respected;
(b) To ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, any registered or unregistered entities, including women, those victims of discrimination because of their sexual orientation and gender identity, youth, persons belonging to minorities, indigenous peoples, non-nationals, including stateless persons, refugees or migrants, and members of religious groups, as well as activists advocating economic, social, and cultural rights;
(c) To ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;
(d) To greater facilitate and protect the exercise of the rights to freedom of peaceful assembly and of association, and in this regard, be particularly vigilant in relation to the specific needs of the aforementioned groups which are at greater risk of attacks and stigmatization of all types;
(e) To ensure that an enabling framework is provided for political parties to be formed — regardless of their political ideology — and to enjoy the level playing field, in particular in relation to their ability to access funding, and to exercise their rights to freedom of expression, including through peaceful demonstrations and access to the media;
(f) To increase the threshold for imposing legitimate restrictions on the rights to freedom of peaceful assembly and of association, that is, to ensure that the strict test of necessity and proportionality in a democratic society, coupled with the principle of non-discrimination, is made particularly difficult to meet;
(g) To ensure that a well detailed and timely written explanation for the imposition of any restriction is provided, and that such restrictions can promptly be the subject of an independent and impartial judicial review;
(h) To provide individuals exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression;
(i) To allow unimpeded access to and use of information and communication technology through which the right to freedom of peaceful assembly and of association can be exercised;
(j) To ensure that those who violate and/or abuse the rights of individuals to freedom of association and of peaceful assembly are held fully accountable by an independent and democratic oversight body and by the courts of law;

[16] A/HRC/23/39, 24 April 2013.

(k) To ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress[17].

25. The appointment of a Special Rapporteur was initially for three years but this mandate has been extended for a further three years[18]. It is, however, clear that there are plenty of issues that need to be addressed and to be pursued if the position of membership-based NGOs is to be strengthened both globally and at the European level.

C Case Law

26. The case law developments have essentially been those arising from the judgments and decisions delivered by the European Court of Human Rights ('the Court') in relation to Article 11 of the European Convention on Human Rights ('the Convention')[19] but there are also three set of views adopted by the United Nations Human Rights Committee in relation to Article 22 of the International Covenant on Civil and Political Rights ('the Covenant')[20] that are of interest.

27. The developments considered below concern firstly the concept of associations and then various issues relating to formation, membership, objects, internal organisation, sanctions and dissolution.

Associations

28. Although there is already extensive case law as to the meaning of 'association' for the purpose of Article 11 of the Convention, the Court has been required to address in several applications to it concerning compulsory membership in land consolidation associations in France[21] and one concerning non-registration of a commercial company[22].

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[17] A/68/299, 7 August 2013.

[18] Human Rights Council resolution A/HRC/24/L.7 of 26 September 2013.

[19] 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

[20] 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. 3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

[21] *Vivier and Others v. France* (dec.), no. 14062/08, 30 August 2011, *Poitevin et Helleboid v. France* (dec.), no. 3049/08, 6 December 2011 and *Bernellon v. France* (dec.), no. 50180/08, 25 September 2012.

[22] *Burlacu v. Romania* (dec.), no. 37898/05, 29 May 2012.

29. In the cases concerning the land consolidation associations, the Court reaffirmed that the term 'association' had an autonomous meaning and would not necessarily exclude bodies with a public law basis[23]. However, it found that these associations were ones whose creation was subject to official authorization, in whose operation the prefect has the power to intervene and whose ex officio members were state authorities. Furthermore, it noted that they had, for the exercise of their public interest missions, public powers through which they could charge a fee on the owners concerned, establish easements or expropriate for the public interest. In these circumstances, the Court unsurprisingly concluded that the land consolidation associations concerned were not associations within the meaning of Article 11 and the applications concerned were thus inadmissible as incompatible *ratione materiae*[24].

30. The finding that the application concerning the non-registration of a commercial company was also inadmissible was equally unsurprising as it has already been established that the right to freedom of association does not cover the establishment of entities with essentially profit-making objectives[25].

Formation

31. There have been seven cases concerned with problems in obtaining the registration of the applicant associations[26], two of which were closely related.

32. In *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (No. 2)*[27] - the first of the two related cases, which concerned the unsuccessful attempt to re-register an association whose dissolution had previously been found by the Court to violate Article 11[28] - the two refusals concerned were acknowledged to have interfered with the freedom of association of the applicant political party and of its leaders and members. However, the reasons for the refusal - shortcomings in the party's founding declaration and the absence of an up-to-date list of its founding members - were considered by the Court to be proportionate to the legitimate aims of preventing disorder and of protecting the rights and freedoms of others. In so concluding, the Court was aware of the particular context, namely the execution of its previous judgment, but underlined that the failures concerned were purely content-neutral and were not specifically aimed at the applicant party.

33. As regards the founding declaration the defects related to the lack of declarations personally made by the party's members - many apparently having been made by the same persons - which vitiated the declaration of the founding committee. In the Court's view, it was not unreasonable for a State to condition the formation of a political party on the carrying out, in a specific order, of certain steps that are not

[23] See, e.g., *Chassagnou v. France* [GC], no. 25088/94, 29 April 1999.
[24] *Cf* paragraph 1 of Recommendation CM/Rec/14: For the purpose of this recommendation, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members.
[25] *Cēsnieks v. Latvia* (dec.), no. 56400/00, 12 December 2002. See also the preceding note and paragraph 9 of Recommendation CM/Rec/14: NGOs should not distribute any profits which might arise from their activities to their members or founders but can use them for the pursuit of their objectives.
[26] Five are dealt with in this section and for the other two see paras. 69-70 and 75-76.
[27] No. 41561/07, 18 October 2011.
[28] *United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, 20 October 2005.

unduly onerous and which could vary in line with the historical and political factors peculiar to each country[29]. Furthermore, in view of the specificity of the subject matter, the Court accepted that was also within a State's margin of appreciation to refuse to allow serious defects in those steps, which by their nature have to be carried out in a particular order, to be cured subsequently in the course of the registration proceedings.

34. The Court also did not regard it as unreasonable, in itself, for a political party to be required to enclose with its request for official registration an up-to-date list of its founding members. It noted that the underlying rationale was to ensure that the requisite number of founding members had really been attained at the time when the party was being founded and the Court did not object to the refusal to carve out any exception to take account of the fact that the registration proceedings were connected with the execution of its earlier judgment of the Court, noting that that had been the position adopted by the Committee of Ministers in concluding its examination of that judgment[30]. The Court also underlined that, although both the refusal to register an association or political party and its dissolution are radical in their effects, the former had more limited consequences and could more easily be remedied by a fresh application for registration. In this connection, it noted the main hurdle to successful registration was the number of founding members required and observed that this had been reduced from 5,000 to 2,500.

35. This ruling underlines the importance of strict compliance with formalities for establishing associations that have an admissible rationale and are not being applied in a manner clearly designed to frustrate the establishment of the particular entity concerned. Furthermore, the readiness of the Court to give a State the benefit of the doubt in this regard should be noted, particularly bearing in mind the prior unjustified dissolution of the applicant association and some dubious reasoning in the decisions of the lower courts when refusing the re-registration which was considered to have been cured by the grounds on which the refusals of re-registration were ultimately upheld by the Supreme Court of Cassation.

36. Nonetheless, the European Court did see as 'disquieting and worryingly reminiscent of past infamous persecutions' the fact the police - with a view to establishing irregularities in the party's formation and to put pressure on individuals to deny involvement with the applicant party - had systematically summoned purported members of the party, questioned them about the genuineness of their wish to join it, and in some cases elicited from them declarations to the effect that their wish was not genuine. This is clearly unacceptable in a democratic society but the European Court's concern about this conduct was allayed by the express holding of the Supreme Court of Cassation that the Sofia City Court had erred in admitting in evidence the expert report produced on the basis of the information gathered as a result of this operation so that it had no bearing on the ultimate decision to refuse re-registration.

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[29] *Cf.* paragraph 32 of Recommendation CM/Rec/14: Legal personality for membership-based NGOs should only be sought after a resolution approving this step has been passed by a meeting to which all the members had been invited.

[30] See Resolution CM/ResDH(2009)120, 3 December 2009.

37. However, a refusal of registration of a related association to the political party in the case just discussed was held in *United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 2)* [31]to be in violation of Article 11.

38. Three grounds had been given for the refusal, namely, alleged separatist ideas capable of arousing confrontational attitudes and based on historical interpretations considered absurd by the authorities and the majority of the population, characterisation of Ilinden's goals as political and thus capable of being pursued solely by a political party and Ilinden, an apparent problem with the number of members of its managing council.

39. The first of these had previously been found insufficient by the Court in respect of the applicant association and its related political party[32] but it reaffirmed its now well-established position that 'the expression of separatist ideas cannot be regarded as in itself threatening a State's territorial integrity and national security"[33].

40. The second ground was equally inconsistent with the Court's case law that associations deemed by the courts to pursue 'political' goals should not be required to register as a political party when this did not entitle them to participate in any elections but would subject them to additional requirements and restrictions[34]. The alleged 'political' character of an association's aims could not, therefore, be a sufficient ground for refusal of its registration.

41. As regards the third ground - the election by the founders of thirteen members to the association's managing council in breach of a provision in the statute that the first managing council was to consist of only three members - the Court concluded that this was a defect of a 'relatively trivial character', particularly given the absence of any explanation as to why it could not be cured in the course of the registration proceedings. Such a relaxed approach to the compliance with the formalities when compared with the stance adopted in the other *Ilinden* case can perhaps be best understood by the absence here of any suggestion of fraud and the existence of an excess rather than a possible insufficiency of numbers regarding a precondition for formation.

42. The rulings in both cases reflect the Court's view that a refusal of registration is a radical measure that prevents an association from even commencing any activity and the need for the grounds given to be subject to close scrutiny. At the same time, they underline the need for those forming associations to take sufficient care to ensure that the formalities are duly observed.

43. This approach can also be seen in *The Argeş College of Legal Advisers v. Romania*[35], in which the refusal of registration for a proposed association of legal advisers, a profession that had been established by law in 2003, on the basis that there were

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[31] No. 34960/04, 18 October 2011.
[32] *United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 59491/00, 19 January 2006 and *Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria*, no. 59489/00, 20 October 2005.
[33] Para. 37.
[34] *United Macedonian Organisation Ilinden and Others v. Bulgaria* (no. 59491/00, 19 January 2006 and *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.
[35] No. 2162/05, 8 March 2011.

irregularities in its statute was successfully challenged. The irregularities concerned provisions which led the court hearing an appeal against the grant of registration to believe that the applicant association wanted to carry on activities similar to those of lawyers, which by their nature were incompatible with the profession of legal adviser. At first instance, these irregularities had not been noted by the court that allowed the registration but the association itself had taken steps to remedy them before the appeal hearing, something explicitly permitted by law in respect of first instance proceedings but on which nothing was stipulated in respect of appellate ones. However, the appeal court dismissed the applicant's arguments that it had removed the contested provisions from its statute, judging that the first-instance judgment was delivered taking into account the statute before its amendment.

44. The Court considered that the main purpose of the option to make amendments to the submitted documents was to give the opportunity to an association making a registration request to comply with all formalities during the registration proceedings, should the initial request be affected by irregularities. In its view the decision of the appellate court to consider irrelevant the changes brought to the statute of the association thus appeared to contradict the purpose of the law. Moreover, it observed that this decision proved to be even more severe in its effects, given that the applicant did not have any other opportunity to reapply for registration, taking into account that by the time its request for registration had been refused, the deadline for the setting up of associations of legal advisers had expired. In addition the Court found the present case could be distinguished from one in which it had found proportional the dissolution of an association which had among its statutory goals the 'setting up of bar associations' and whose members effectively performed activities which were within the exclusive competence of the Romanian bar association[36] since the statutory provisions of the applicant did not give any indication that it had the aim of setting up such organisations. As a consequence, the Court concluded that the reasons invoked by the authorities to refuse the registration of the applicant association were not relevant and sufficient and that such a severe measure as refusal of the request for registration, taken even before the association started operating, appeared disproportionate to the aim pursued and so could not be deemed necessary in a democratic society.

45. A refusal of registration was also found by the United Nations Human Rights Committee to be in violation of Article 22 of the Covenant in *Katsora, Sudalenko and Nemkovich v. Belarus*[37]. The initial reasons given were that: the organisation's goals included entering into associations with other 'local and international organizations' was inadmissible as it was only possible to enter into association with other Belorussian organizations of the same type; the organisation's stated purposes were described in one place as 'humanitarian' and later as 'humanist', which was seen to be contradictory; the application had failed to specify the particular room of the stated building which would be used as the organization's Head Office; and different dates of birth had been given for one particular member.

46. On appeal, the Supreme Court reiterated the second and fourth of those reasons but also that: the statute of the organisation declared that, in case of its liquidation, issues

[36] *Bota v. Romania* (dec.), no. 24057/03, 12 October 2004.
[37] Communication No. 1383/2005, 25 October 2010.

related to its funds and property shall be resolved by its assembly and by a court decision, which was seen to be in contradiction with provisions of the Civil Code; that the address of the head office of the organisation listed a wrong room number; and that article 5.1 of the organization's statute stated that its highest organ with competency to take certain decisions was its general assembly but its article 5.5.8 gave competency for some of these decisions to the organization's central council, which was seen as contradictory.

47. The Committee found a violation of Article 22 on the basis that no argument had been advanced as to why the reasons, although prescribed by law, were *necessary* in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, as well because the refusal of registration led directly to the unlawfulness of operation of the unregistered organization on the State party's territory and directly precluded the authors from enjoying their freedom of association.

48. A similar conclusion was reached by the Committee in *Kungurov v. Uzbekistan*[38] in which registration was refused for breach of two substantive requirements of the State party's domestic law - namely, that the association concerned not engage in any human rights activities that any official body is engaged in and that it be physically present in every region of Uzbekistan - and technical 'defects' in the association's application materials. The Committee considered the substantive requirements to be not only imprecise but also to be lacking any argument as to why it should be necessary to condition the registration of an association on a limitation of a scope of its human rights activities to the undefined issues not covered by state organs or on the existence of regional branches. In addition, the Committee considered that, even if the application materials of the association did not fully comply with the requirements of domestic law, the reaction of the State party's authorities in denying it registration was disproportionate.

49. These two rulings of the Committee - like the preceding one of the Court - underline that form should not prevail over substance in the registration process.

50. However, well-established case law allowing the restriction on names of associations being formed with names that could be misleading to the public[39] was followed in *Hayvan Yetiştiricileri Sendikası v. Turkey*[40] in which it was held that the dissolution of an association that had used the word 'union' in its name was not disproportionate where the use of name 'union' was restricted by law to institutions created by workers or employers, which the applicant union of animal breeders was not. In the Court's view this restriction was essentially on the entity's name and not its activities and they could have continued their activities by using another name - such as 'association', 'foundation' or 'cooperative' - since the name 'union' was not essential to the effective exercise of freedom of association[41].

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[38] Communication No. 1478/2006, 17 March 2006.
[39] See, e.g., *Gorzelik and Others v. Poland* [GC], no. 44158/98,
[40] (dec.), no. 27798/08, 11 January 2011.
[41] *Cf.* paragraph 34 of Recommendation CM/Rec(2007)14: Legal personality should only be refused where there has been a failure to submit all the clearly prescribed documents required, a name has been used that is patently misleading or is not adequately distinguishable from that of an existing natural or legal person in the state

Membership

51. The cases relating to this topic concerned a bar on belonging to an association and the issue of compulsion to belong, both in terms of becoming a member against one's will and of being obliged to allow others to be admitted as members.

52. A bar on members of the communal guard in Poland becoming members of political parties was held in *Strzelecki v. Poland*[42] not to be a violation of their right to freedom of association. In reaching this conclusion, which followed established case law[43] and took account of the specific authorisation in Article 11(2) for restrictions on the exercise of this right by members of the armed forces, the police and the administration of the state, the Court emphasised the importance of the political neutrality of members of the guard given their hierarchical organisation and their ability to apply coercive measures which could interfere with the rights of citizens. Furthermore, the need for neutrality was seen as being enhanced by the fact that the leadership of the guard was subject to appointment and dismissal by local authorities which had become major players in politics following the decentralisation of government functions. Moreover, as the communal guard was effectively a policing body with local roots and had a close relationship with the people that it serves, this relationship must be based on mutual trust, which would be better achieved if the members of the guard were detached from the political struggle. As with other such cases, the Court underlined the limits of the restriction, namely, that it did not prevent them from expressing their political opinions and preferences in other ways so that they could, in particular, join unions and associations, vote and stand for local election. As a result, the restriction only applied to activities that would give them a real opportunity for them to influence the power and politics of the State[44].

53. The Court has established that compulsory membership of associations can be contrary to the negative aspect of freedom of association and this has been particularly true of membership of hunters' associations required of persons owning land over which hunting can take place[45]. However, there will only be a violation of Article 11 where the required membership is contrary to a belief or conviction that has a certain level of cogency, cohesion and importance which makes it worthy of respect in a democratic society and the freedom of action or choice left to individual concerned is either non-existent or so reduced as to be of no practical value.

54. Although the former condition was found to be satisfied in *A.S.P.A.S. and Lasgrezas v. France*[46], as a result of the second applicant's ethical opposition to hunting[47], the

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concerned or there is an objective in the statutes which is clearly inconsistent with the requirements of a democratic society.

[42] No. 26648/03, 10 April 2012.

[43] See, e.g., *Ahmed and Others v United Kingdom*, no 22954/93, 2 September 1998 and *Rekvényi v Hungary* [GC], no 25390/94, 20 May 1999.

[44] *Cf.* paragraph 24 of Recommendation CM/Rec(2007)14: Persons belonging to an NGO should not be subject to any sanction because of their membership. This should not preclude such membership being found incompatible with a particular position or employment.

[45] See *Chassagnou v. France* [GC], no. 25088/94, 29 April 1999

[46] No. 29953/08, 22 September 2011.

latter one was not because she both had a period of one year from the publication of the relevant law to avoid becoming a member of two hunting associations which she had not exercised this option and she had subsequently made use of the opportunity to leave the associations at the end of the first six-year period of membership. As a consequence the Court understandably concluded that the second applicant to have been provided with opportunities for real and effective choice not to join the associations which did not carry the same ideals as her own.

55. The issue of compulsion to allow membership was raised in *Staatkundig Gereformeerde Partij v. Netherlands*[48] which concerned a complaint that a ruling of the Supreme Court that the State was under a duty to take measures to ensure that the applicant political party granted the right to stand for election to women violated its rights under Articles 9, 10 and 11. Although the applicant political party had, in the course of the proceedings leading to this ruling begun to allow women to become members, its key tenet derived from Scripture[49] was that men and women had different roles in society and that women, unlike men, should not be eligible for public office.

56. The Court proceeded on the assumption that there had been an interference with the rights invoked which had the legitimate aim of protecting the rights of others. However, it concluded that the application was manifestly ill-founded because the position of the applicant party that women should not be allowed to stand for elected office on its own lists of candidates was not acceptable regardless of the deeply-held religious conviction on which it was based. This conclusion was based on the Court's established position that a political party may pursue its political aims if the means used to those ends are legal and democratic and if the changes proposed are themselves be compatible with fundamental democratic principles[50]. In the present case, these conditions were not satisfied since the aims of the applicant political party were incompatible with the goal of the advancement of the equality of the sexes, which necessarily prevented the State from lending its support to views of the man's role as primordial and the woman's as secondary.

57. Although this ruling is directed to the position taken by political parties, it does not seem improbable that the underlying reasoning will ultimately be found equally applicable to exclusions from membership of associations which embody a discrimination for which no objective and reasonable justification can be advanced, as presaged in paragraph 22 of Recommendation CM/Rec(2007)14[51].

58. In addition, a potentially interesting variation on the issue of involuntary membership of an association was flagged up in *Deyanov v. Bulgaria* (dec.), no. 52411/07, 30 November 2010, although the case itself was inadmissible for want of an actual

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[47] Such an objection was found to be absent in *Chain-Millet and Others v. France* (dec.), no. 13850/09, 2 July 2013, with the consequence that a similar application relying upon Article 11 was found to be inadmissible as manifestly ill-founded.

[48] (dec.), no. 58369/10, 10 July 2012.

[49] In particular 1 Corinthians 11:3 ("But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God").

[50] See *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 13 February 2003.

[51] The ability of any person, be it natural or legal, national or non-national, to join membership-based NGOs should not be unduly restricted by law and, subject to the prohibition on unjustified discrimination, should be determined primarily by the statutes of the NGOs concerned.

victim. The applicant in this case had complained that a law had authorised the police to set up and use non-profit organisations for the purposes of their undercover operations. It was accepted by the Court that, in the case at hand it could perhaps be argued that all people participating in non-profit organisations could potentially be affected by the impugned measures because they would never know whether that organisation had been set up by the police to serve an undercover operation and whether, therefore, their right to freedom of association was being perverted.

59. However, this issue did not have to be pursued because the applicant concerned had not claimed to be or intended to become a member of a non-profit organisation which had possibly been created by the police for the pursuit of goals different from the ones declared in its constitutional documents. Indeed, the applicant did not indicate being or intending to become a member of any non-profit organisation so that his complaints before the Court, as well as before the national authorities, were purely abstract. As a result, the applicant could not be regarded as having standing to raise the present complaint, which represents an actio popularis[52]. Nonetheless, Article 11 could ultimately entail a significant restriction on the way in which some undercover operations are conducted.

Objects

60. The admissibility of an association's objects is a continuing basis for attempts to interfere with the establishment and operation of associations and, as the case of in *Staatkundig Gereformeerde Partij v. Netherlands* discussed in the preceding section well illustrates, this will in some instances be entirely compatible with the Convention.

61. Two further such instances can be seen in the Court's rulings in *Hizb Ut-Tahrir and Others v. Germany*[53]and *Kasymakhunov and Saybatalov v. Russia*[54], both of which concern Hizb ut-Tahrir al-Islami (The Party of Islamic Liberation) ('Hizb ut-Tahrir'), an international Islamic organisation with branches in many parts of the world. Hizb ut-Tahrir advocates the overthrow of governments and their replacement by an Islamic State in the form of a recreated Caliphate. The rulings in these two cases concern the ban on the activities of Hizb ut-Tahrir in Germany and Russia respectively.

62. In the application against Germany, the Court found that the ban was based on numerous statements which not only denied the State of Israel’s right to exist but which called for its violent destruction and the banishment and killing of its inhabitants. Having regard to its case law on Article 17 of the Convention[55], the Court understandably concluded that the applicant's invocation of Article 11 to contest the

[52] In order to be able to lodge a petition by virtue of Article 34 of the Convention, a person must be able to claim to be the victim of a violation of the rights set forth in the Convention and must, therefore, show how he or she is affected by the impugned measure.
[53] (dec.), no. 31098/08, 12 June 2012.
[54] No. 26261/05, 14 March 2013.
[55] Nothing in this Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

ban on its activities was an attempt to deflect this provision from its real purpose by employing the right to freedom of association

> for ends which are clearly contrary to the values of the Convention, notably the commitment to the peaceful settlement of international conflicts and to the sanctity of human life[56].

As a result, the applicant was precluded, by reason of Article 17 of the Convention, from benefitting from the protection afforded by Article 11 and its application was inadmissible as incompatible *ratione materiae*.

63. The case against Russia stemmed from the conviction and imprisonment of two members of Hizb ut-Tahrir for dissemination of its political ideas. The Court reaffirmed its finding in the German case that Hizb ut-Tahrir's aims were clearly contrary to the values of the Convention and underlined that the means which it planned to use in order to gain power and to promote a change in the legal and constitutional structures of the States where it was active could not be regarded as legal and democratic. Furthermore the Court considered that the changes in the legal and constitutional structures of the State proposed by Hizb ut-Tahrir were incompatible with the fundamental democratic principles underlying the Convention since it rejected all political freedoms and it would introduce a plurality of legal systems, promote differences in treatment based on sex and establish a regime based on sharia. As a result the dissemination of the political ideas of Hizb ut-Tahrir by the applicants was seen as clearly constituting an activity falling within the scope of Article 17 of the Convention and their attempt to rely upon Articles 9, 10 and 11 was necessarily incompatible *ratione materiae* with the provisions of the Convention.

64. However, although the Court had no difficulty in upholding the approach taken by the national authorities in these two cases, there were two other cases in which it found the assessment made of an association's objects incompatible with the right to freedom of association.

65. The first was *United Macedonian Organisation Ilinden and Others v. Bulgaria (No. 2)*, which has already been considered under formation[57].

66. The second was *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*[58], which concerned the requirement that the applicant union of employees in education and science amend its constitution so that it no longer specified 'in their mother tongue' at the end of the statement that the union defended the right of all to receive education, backed up by dissolution proceedings to enforce it. This deletion was required on the basis that the call for education in a mother tongue other than Turkish was unconstitutional[59] and ran counter to the acceptance of a unitary State and to the existing legal system. However, the Court did not consider these reasons to be relevant or sufficient.

67. In the Court's view the principle defended by the applicant union, according to which individuals making up Turkish society could receive education in a mother tongue

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[56] Para. 74.
[57] See para. 39.
[58] No. 20641/05, 25 September 2012.
[59] Articles 3 (The State of Turkey, with its territory and nation, is an indivisible entity. Its language is Turkish) and 42 (No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institution of education. Foreign languages to be taught in institutions of education and the rules to be followed by schools conducting education in a foreign language shall be determined by law. The provisions of international treaties are reserved).

other than Turkish, was not incompatible with the fundamental principles of democracy. It noted in particular that nothing in the impugned provision of its constitution could be regarded as a call to violence, uprising or any other form of rejection of democratic principles and that, although such a proposal might have run counter to majority beliefs in public opinion, certain institutions or certain State organisations, or even to Government policy, it was necessary for the proper functioning of democracy that the various associations or political groups were able to take part in public debates in order to help find solutions to general questions concerning political and public stakeholders of all persuasions. In addition, the Court observed that there had been a willingness on the part of the legislature to open private courses for the teaching of languages and dialects other than Turkish which contrasted with the position of the national authorities in finding that the impugned provision was unconstitutional.

68. Furthermore, the Court underlined that there had been no finding that the union had carried out illegal activities capable of undermining the unity of the Republic of Turkey or had pursued aims that were incompatible with democratic principles or engaged in activities that were in breach of those stipulated in its constitution. Indeed, it was impressed by the view of one tribunal that a dissolution application should be dismissed as this would have the effect of calming the social tension, disorder and antagonism that were prevalent in society, and of restoring social peace. Thus, in the Court's view, the union's objective of developing the culture of nationals having a mother tongue other than Turkish by providing education in that mother tongue, was not in itself incompatible with national security and did not represent a threat to public order. Moreover, it emphasised that, even supposing that the competent national authorities could have taken the view that education in one's mother tongue favoured the culture of a minority, the existence of minorities and different cultures in a country is a historical fact that a democratic society must tolerate, or even protect and support, in accordance with the principles of international law.

Internal organisation

69. The Court in *Republican Party of Russia v. Russia*[60] took the opportunity - provided by a complaint about the refusal to amend the information about the applicant political party's address and ex officio representatives contained in the Unified State Register of Legal Entities - to make clear the limited basis, consistent with Article 11, for a State to interfere with the internal functioning of an association.

70. The registration authority had ordered that the applicant should submit the same set of documents as required for the registration of a newly established political party and had then refused to amend the Register, finding, on the basis of the documents submitted by the applicant, that the general conference had been illegitimate. The Court noted that the domestic courts had upheld this refusal to amend the State Register by reference to a legal provision which was not in force at the material time. As no other provision establishing the procedure for amending the Register had been referred to in the domestic proceedings, the Court concluded that the domestic law was not formulated with sufficient precision to enable the applicant to foresee which

[60] No. 12976/07, 12 April 2011.

documents it would be required to submit and what would be the adverse consequences if the documents submitted were considered defective by the registration authority. As a consequence it found that the measures taken by the registration authority lacked a sufficiently clear legal basis.

71. However, having regard to the fact that the ground for the refusal to amend the Register was the registration authority's finding that the general conference had been convened and held in breach of the procedure prescribed by the applicant's articles of association, the Court then went on to consider the extent to which the State could interfere with an association's internal organisation and functioning in the event of non-compliance with reasonable legal formalities applying to its establishment, functioning or internal organisational structure. While accepting that this was in principle possible, the Court reaffirmed its view that the authorities should not intervene in the internal organisational functioning of associations to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter.

72. The Court noted that, in the present case, the registration authority had discovered irregularities in the election of regional delegates for the general conference, finding for example that some regional conferences had been convened by unauthorised persons or bodies, some other regional conferences had been inquorate, minutes of several regional conferences did not mention the names of participants and some of the participants were not members of the applicant. In the Court's view, there was no justification for the registration authority to interfere with the internal functioning of the applicant to such an extent. In this connection, it observed that domestic law did not provide for any detailed rules and procedures for convening regional conferences or electing delegates for the general conference and that it did not establish any requirements as to the minutes of such conferences. The Court thus considered that it should be up to an association itself to determine the manner in which its conferences are organised.

73. Furthermore, the Court emphasised that it should be primarily up to the association itself and its members, and not the public authorities, to ensure that formalities of this type are observed in the manner specified in its articles of association. As there were no complaints from the applicant's members concerning the organisation of the general conference concerned or the regional conferences preceding it, the Court was not convinced by the argument that the public authorities' interference with the applicant's internal affaires was necessary to protect the rights of the applicant's members. The Court thus concluded that, by refusing to amend the State Register, the domestic authorities went beyond any legitimate aim and interfered with the internal functioning of the applicant in a manner which cannot be accepted as lawful and necessary in a democratic society and there was, therefore, a violation of Article 11[61].

[61] Judge Kovler, although leaving aside the problem of the quality of the law regulating political parties' activities, dissented on the basis that the refusal to register the party had not been definitive and the applicant could have corrected the identified defects in the documents and re-submitted its request for registration. In his view, the problem of the registration of the amendments of an existing political organisation could have been resolved at this stage had the organisation in question been more respectful of the procedural requirements but it preferred to challenge the refusal before a court after the second attempt, and the national courts found that the documents submitted did not meet the requirements established by law.

74. Although this case concerned a political party and the Court's conclusions concerning interference with internal organisation made reference to the Guidelines on prohibition and dissolution of political parties and analogous measures adopted by the European Commission for Democracy through Law ('the Venice Commission')[62], there is no reason to consider that the Court's ruling on this matter is not equally applicable to associations in general[63].

75. It should also be noted that the importance attached to protection of associations against unjustified State interference led the Court in *Sindicatul "Păstorul cel Bun" v. Romania* [64] to conclude, in applying Article 9 of the Convention in the light of Article 11, that a refusal to register a trade union of Orthodox priests was a decision reasonably taken to respect the autonomy of religious denominations and was necessary in a democratic society.

76. It was material to this conclusion that there had been an unexplained failure by those forming the union to comply with the requirement of obtaining the archbishop's permission to establish the trade unions and that the consultative and deliberative bodies provided for by the Church's Statute would be replaced by or obliged to work together with a new body – the trade union – not bound by the traditions of the Church and the rules of canon law governing consultation and decision-making. The Court considered that the latter risk was plausible and substantial and that the refusal of registration did not go beyond what was necessary to eliminate that risk. Furthermore, the Court underlined that the Statute of the Romanian Orthodox Church did not provide for an absolute ban on members of its clergy forming trade unions to protect their legitimate rights and interests and so there was nothing to stop the applicant union's members from availing themselves of their right under Article 11 by forming an association of this kind that pursued aims compatible with the Church's Statute and did not call into question the Church's traditional hierarchical structure and decision-making procedures. It also noted that the applicant union's members were also free to join any of the associations currently existing within the Romanian Orthodox Church which had been authorised by the national courts and operated in accordance with the requirements of the Church's Statute[65].

77. This is a ruling that in substance is unlikely to be relevant beyond the position of religious communities and denominations it does serve to underline how fundamental in the Court's view is the need for associations to be protected from attempts by State authorities with their internal operation.

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[62] Doc. CDL-INF(2000)1), 10 January 2000.

[63] See also paragraph 48 of Recommendation CM/Rec(2007)14: The appointment, election or replacement of officers, and, subject to paragraphs 22 and 23 above, the admission or exclusion of members should be a matter for the NGOs concerned. Persons may, however, be disqualified from acting as an officer of an NGO following conviction for an offence that has demonstrated that they are unfit for such responsibilities. Such a disqualification should be proportionate in scope and duration

[64] [GC], no. 2330/09, 9 July 2013.

[65] Judges Spielmann, Viliger Løpez Guerra, Bianku, Møse and Jäderblom dissented on the basis that: there was no threat to the Church's autonomy as applicant union's demands were exclusively limited to protecting its members' professional, economic, social and cultural rights and interests; the union's proclaimed objectives were not to replace Church authorities with union ones, but rather to present and defend proposals before those authorities on behalf of union members, on no account assuming Church functions; and, even after registration, the union's members would still have remained within the administrative structure of the Church and subject to its internal regulations, which imposed special duties on them as members of the clergy.

Sanctions

78. The imposition of sanctions for a person's membership of an association, as well as activities undertaken in connection with it, are certainly capable of giving rise to a violation of the right to freedom of association, although they may be justified if this is incompatible with his or her employment[66]. The Court found no such justification in two cases concerned with employees but did so in two other such cases. In all but one of the cases, the associations were trade unions but approach seen in those cases undoubtedly contains elements of more general application. In addition to the cases dealt with by the Court, there was one determined by the United Nations Human Rights Committee, which also found a penalty imposed on an association to be unjustified and illustrated how the activities undertaken by associations are not just protected by the right to freedom of association but other human rights as well.

79. The first of the two Court cases in which a sanction was held to be unjustified was *Şişman and Others v. Turkey*[67], which concerned warnings as a disciplinary sanction for affixing to the walls of the applicants' offices posters prepared by their union to celebrate the International Day of Work. The Court emphasised that the display was limited to the temporary use of the walls of their offices in order to communicate with union members about the organization of the event which was seen as a way to affirm the solidarity of workers and to fully exercise independent trade union rights. Moreover, taking into account the peaceful nature of the proposed event, the Court found that the posters did not include anything in their text or in their illustrations that was unlawful or which might shock the public. In these circumstances, although the warnings imposed were a small sanction, the Court considered that it was sufficient to deter members of unions from operating freely and could not be regarded as necessary in a democratic society.

80. In the second case, *Redfearn v. United Kingdom*[68], the sanction was much more significant, namely, dismissal. The applicant concerned had been employed as a driver responsible for transporting children and adults with physical and/or mental disabilities, the majority of whom were Asian in origin, and had been dismissed on account of being a member of a political party which only extended membership to white nationals and being elected as a local councillor for it. However, the applicant had been regarded as a 'first-class employee' and, prior to his political affiliation becoming public knowledge, no complaints had been made against him by service users or by his colleagues. The applicant was unable to challenge his dismissal because he had been employed for less than the one year's qualifying service required to bring a claim for unfair dismissal.

81. The Court recognised the difficult position that the applicant's employer might have found itself in when his candidature for election as a councillor became public knowledge and it accepted that, even in the absence of specific complaints from service users, his membership of the political party could have impacted upon the

[66] See, e.g., *Van der Heijden v. Netherlands* (dec.), no. 11002/84, 8 March 1985 and *Vogt v Germany* [GC], no 17851/91, 26 September 1995.
[67] No. 1305/05, 27 September 2011.
[68] No. 47335/06, 6 November 2012.

employer's provision of services, especially as the majority of service users were vulnerable persons of Asian origin. Nonetheless it also saw the consequences of the dismissal as being particularly serious given that his age - he was fifty-six years' old - meant that he was likely to experience considerable difficulty in finding alternative employment. As a result, the dismissal had to be regarded as striking at the very substance of his rights under Article 11.

82. The Court concluded that, even if it were to acknowledge the legitimacy of the employer's interest in dismissing the applicant from its workforce having regard to the nature of his political beliefs, the policies pursued by the BNP and his public identification with those policies through his election as a councillor, the fact remained that Article 11 was applicable not only to persons or associations whose views are favourably received or regarded as inoffensive or as a matter of indifference but also those whose views offend, shock or disturb. In the Court's view, what was decisive in such cases was that the domestic courts or tribunals should be allowed to pronounce on whether or not, in the circumstances of a particular case, the interests of the employer should prevail over the Article 11 rights asserted by the employee, regardless of the length of the latter's period of employment. It, therefore, considered it was incumbent on the respondent State to take reasonable and appropriate measures to protect employees, including those with less than one year's service, from dismissal on grounds of political opinion or affiliation, either through the creation of a further exception to the one-year qualifying period - which already applied in cases of discrimination on account of race, religion or sex - or through a free-standing claim for unlawful discrimination on grounds of political opinion or affiliation. As there was no such measure, the facts of the present case were held to give rise to a violation of Article 11[69]. In this case the Court was not ruling that it was necessarily unjustified for the employer to have dismissed the applicant but there ought to have been a judicial assessment as to whether there really was an incompatibility between his political affiliation and his specific responsibilities as an employee[70]. Nonetheless, the fact that Court made it clear that the unpopularity of an association's objectives could not in itself be a sufficient justification for a sanction underlines the burden that must lie on an employer to demonstrate how exactly the employee's connection with a particular association causes real prejudice to the company concerned and how it is not possible to mitigate this by transferring him or her to a less publicly visible task[71].

83. In *Korneenko v. Belarus*[72] the United Nations Human Rights Committee was concerned with a situation in which the author of the communication, the chairperson of an NGO, had been fined for the use by the NGO of computer equipment, received as untied foreign aid, for the preparation for and monitoring of the elections and the computer equipment in question had been confiscated. The author had submitted that the computer equipment seized was a key part of the elections monitoring process

[69] Judges Bratza, Hirvelå and Nicolaou dissented on the basis that it was within the United Kingdom's margin of appreciation to extend the exception from the qualifying period to cases of discrimination on grounds of race, religion and sex.

[70] The present case might be contrasted with *Van der Heijden v. Netherlands* (dec.), no. 11002/84, 8 March 1985, which concerned the dismissal of the applicant from a post in a foundation working for the integration of aliens on account of his active role for a political party that had a hostile attitude to the presence of workers from foreign countries in the Netherlands.

[71] The Court observed that the applicant was 'he was summarily dismissed without any apparent consideration being given to the possibility of transferring him to a non-customer facing role' (para. 45).

[72] Communication No. 1226/2003, 20 July 2012.

carried out by the NGO and that the evidence obtained from the information saved on it had served as a basis for the subsequent dissolution of the NGO by court order. In approaching this issue, the Committee started from the premise that the right to freedom of association related not only to the right to form an association but also guaranteed the right of its members freely to carry out the statutory activities of the association. In its view, the protection afforded by Article 22 of the Covenant extended to all such activities, and any restrictions placed on the exercise of this right must satisfy the requirements of paragraph 2 of that provision. It thus concluded that the seizure of the computer equipment and the imposition of a fine on the author, given the fact that they effectively resulted in the termination of elections monitoring by the NGO, amounted to a restriction of the author's right to freedom of association.

84. Furthermore, the Committee considered that the reference to the notion of 'democratic society' in the necessity test for admissible restrictions on this freedom indicated that the existence and operation of associations, including those which peacefully promote ideas not necessarily favourably received by the government or the majority of the population, is a cornerstone of a democratic society. The Committee noted that the State party had not advanced any arguments as to why it would be *necessary*, for the purposes of Article 22(2) to prohibit and penalize the use of such computer equipment 'for the preparation for and conduct of the elections, referendums, recall of a deputy or of a member of the Council of the Republic, for the preparation of gatherings, meetings, street marches, demonstrations, pickets, strikes, the production and dissemination of politically charged material, as well as the organization of seminars and other forms of politically charged activities directed at the public at large'[73].

85. Moreover, the Committee pointed out that the activity for which the author was held responsible fell within the scope of both Article 19[74] and Article 25(a)[75] of the Covenant, which respectively guarantee freedom to seek, receive and impart information and ideas and recognize and protects the right of every citizen to take part in the conduct of public affairs. Given the absence of any pertinent explanations from the State party, the Committee concluded that the restrictions of the exercise of the author's freedom to seek, receive and impart information and ideas, although permitted under domestic law, could not be deemed necessary for the protection of national security or of public order (*ordre public*) or for respect of the rights or reputations of others and that that the relevant provisions of domestic law could also be exploited to unreasonably restrict the rights protected by Article 25(a).

[73] The administrative offence, envisaged by paragraph 4, part 3, of the temporary Presidential Decree No. 8 on certain measures emending the procedure for the acceptance and use of untied foreign aid of 12 March 2001, for which the author was fined.

[74] Article 19 provides: 1. Everyone shall have the right to hold opinions without interference.2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

[75] Article 25 provides: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

86. The Committee was thus understandably of the view that the facts before it disclosed a violation by the State party of Article 22(1), read in conjunction with Article 19(2) and also in conjunction with Article 25(a) of the Covenant.

87. However, sanctions connected with the activities of two police trade unions were not considered by the Court to involve any unjustified restriction on freedom of association, in both instance because of the responsibilities of the persons sanctioned but in the second case also because of its assessment of the impact of the sanction concerned.

88. The case of *Szima v. Hungary*[76] was concerned with the fining and demotion of a senior police officer - who was, at the time, the chairperson of a police trade union - for having repeatedly expressed critical views about the manner in which police leaders managed the force, and accused them of disrespect of citizens and of serving political interests in general. In the Court's view, the allegations made – in particular those accusing senior police management of political bias and agenda, transgressions, unprofessionalism and nepotism – were to be regarded from the general perspective of freedom of expression as the applicant's statements had overstepped the mandate of a trade union leader since they are not at all related to the protection of labour-related interests of trade union members. These allegations were, even if representing predominantly value-judgments, seen by the Court as capable of causing insubordination since they might discredit the legitimacy of police actions, particularly as no clear factual basis for the statements was provided. The Court considered that the protection of loyalty and the trust in the constitutionality of police leaders' actions was not a matter of administrative convenience and that the applicant, as a senior police officer, had considerable influence on trade union members and other servicemen, among other things by controlling the trade union's website. In view of her position as a high-ranking officer and trade union leader, the Court took the view that the applicant should have exercised her right to freedom of expression in accordance with the duties and responsibilities which that right carries with it in the specific circumstances of her status and in view of the special requirement of discipline in the police force. As the maintenance of discipline was seen as meeting a pressing social need and the sanction was relatively mild, the Court concluded that there had been no violation of Article 10 read in the light of Article 11[77].

89. Similarly, another sanction directed against a police trade union was found not to be contrary to the Convention, on this occasion Article 11. The sanction concerned statements made by the Minister of Interior criticising a banner at a demonstration about proposed changes to the social security for policemen and their low remuneration. The Minister's statements indicated that he might no longer communicate with the representatives of the first applicant, that he had sanctioned its

[76] No. 29723/11, 9 October 2012.

[77] Judge Tulkens dissented, noting in particular that the Court's approach confined the role of a union to the protection of workers' interests stricto sensu, without considering that such protection could extend more broadly to criticism about alleged failings in the institution itself and did so without any other explication or justification. Furthermore she contrasted the refusal of the domestic courts to accept evidence in respect of some allegations - which the Court itself said was of serious concern - with the Court's criticism of the applicant for not providing a clear factual basis for what amounted to value judgments. Finally, although Judge Tulkens accepted that a the fine might be regarded as lenient, the same could not be said of the demotion.

president by transferring him to a different position and that he might sanction other policemen more severely. The Court in *Trade Union of the Police in the Slovak Republic and Others v. Slovakia*[78] accepted that the applicants were intimidated by the Minister's statements and thus that they had ' a chilling effect and discouraged them from pursuing activities within the first applicant trade union, including organising or taking part in similar meetings'[79] which interfered with their right to freedom of association. However, it considered that this interference met a pressing social need in that it was aimed at ensuring respect for the requirement that police officers should act in an impartial manner when expressing their views so that their reliability and trustworthiness in the eyes of the public be maintained. Furthermore, the Court emphasised that the statement implying the possibility of the imposition of further sanctions was exclusively directed against calls for the Government's resignation, which the Minister considered to be in breach of the requirement that police officers should express their views in public in an impartial and reserved manner.

90. Moreover, the Court noted that the Minister had expressly acknowledged the right of the police to elect their trade union representatives, it has not been shown that the first applicant was prevented from pursuing trade union activities, organising other public meetings or from defending the rights of its members through a variety of means for which the domestic law expressly provides or that the other applicants had been prevented, as a result of the impugned statements or any consecutive action, from availing themselves of their freedom of association as representatives or members of the first applicant association. In addition, the Court observed that there was no indication that the Minister's statements were based on an inappropriate assessment of the relevant facts. As a result the Court concluded that the means employed in order to achieve the legitimate aim pursued were not disproportionate.

Dissolution

91. The acceptability of dissolution as a measure taken in respect of associations has been considered in seven cases[80] and was found by the Court to be justified in four of them.

92. The dissolution of a political party on the basis of activities and statements of some of its members which, according to the Constitutional Court of Turkey, rendered it a centre of illegal activities[81] was found to violate Article 11 in *HADEP and Demir v. Turkey*[82] as it did meet a pressing social need and was not necessary in a democratic society Although reiterating the conclusion reached in *Herri Batasuna and Batasuna v. Spain* that links between a political party and a terrorist organisation could objectively be considered as a threat for democracy, the Court examined all the material relied upon and concluded that the activities and statements referred to in the Constitutional Court's decision did not demonstrate that HADEP had associated itself with the terrorist actions of the PKK or had encouraged them in any way. In this

[78] No. 11828/08, 25 September 2012.
[79] Paragraph 60.
[80] In addition to those discussed under other headings; see paras. 50, 66-68 and 83.
[81] Contrary to Article 69(6) of the Constitution: A political party shall be deemed to become the centre of such actions only when such actions are carried out intensively by the members of that party or the situation is shared implicitly or explicitly by the grand congress, general chairmanship or the central decision-making or administrative organs of that party or by the group's general meeting or group executive board at the Turkish Grand National Assembly or when these activities are carried out in determination by the above-mentioned party organs directly.
[82] No. 28003/03, 14 December 2010.

connection it noted that reliance had been placed on a large number of statements made by various HADEP members, in which the actions of the security forces of Turkey in south-east Turkey in their fight against terrorism was defined and referred to as a "dirty war". However, the Court has previously considered this term to be a sharp criticism of the government's policy and of the actions of their security forces but that it did not incite people to hatred, revenge, recrimination or armed resistance[83]. In its view, the severe, hostile criticisms made by those HADEP members about certain actions of the armed forces in their anti-terrorist campaign could not in themselves constitute sufficient evidence to equate HADEP with armed groups carrying out acts of violence. Similarly problematic was the reliance on persons visiting HADEP's office being able to watch a television channel linked to the PKK as this failed to dissociate the personal views of a person from received information that others wished or might be willing to impart to him or her. Moreover, much reliance was considered to have been unjustifiably placed on the action of a non-HADEP member replacing the Turkish flag by the PKK's one at the party's annual general meeting and on the criminal proceedings against HADEP members that had been suspended and thus not led to criminal liability being established. Finally the Court considered that statements said to support a connection between HADEP and the PKK actually presented a political project whose aim is in essence the establishment – in accordance with democratic rules – of 'a social order encompassing the Turkish and Kurdish peoples' but that, even assuming such statements advocated the right to self-determination, that would not in itself be contrary to the fundamental principles of democracy.

93. Dissolution was also found to be unwarranted in *Republican Party of Russia v. Russia*[84] in respect of such a measure taken against one of Russia's oldest political parties not because of its objects or activities but for its failure to comply with the requirements of minimum membership and regional representation. This measure was not mitigated because of the opportunity given for the applicant party to reorganise itself into a public association since the Court underlined its view that it was unacceptable for an association to be forced to take a legal shape its founders and members did not seek[85] and, as in Russia political parties were the only actors in the political process capable of nominating candidates for election at the federal and regional levels, it was essential for the applicant to retain the status of a political party and the right to nominate candidates for elections which that status entailed.

94. The Court notes that the applicant had existed and participated in elections since 1990 and had adjusted its membership and went through a re-registration procedure following the introduction of a minimum membership requirement of 10,000 in 2001 but had been dissolved in 2007 after a drastic five-fold increase of the minimum membership requirement to 50,000. The introduction of the minimum membership requirement and its subsequent increase was said to be needed to strengthen political parties and limit their number in order to avoid disproportionate expenditure from the budget during electoral campaigns and prevent excessive parliamentary fragmentation and, in so doing, promote stability of the political system. However, the Court was not convinced by either argument. Firstly, political parties in Russia did not have an unconditional entitlement to benefit from public funding and so financial

[83] *Birdal v. Turkey*, no. 53047/99, 2 October 2007, paras. 6 and 37.
[84] No. 12976/07, 12 April 2011.
[85] See also para. 40.

considerations could not serve as a justification for limiting the number of political parties and allowing the survival of large, popular parties only. Secondly, the supposed concern about excessive parliamentary fragmentation was adequately met by the introduction of a 7% electoral threshold, one of the highest in Europe, and a political party's right to participate in elections was not automatic since candidates could only be nominated by ones that have seats in the State Duma or have submitted a certain number of signatures to show that they have wide popular support.

95. The Court was also unable to agree with the argument that only those associations that represent the interests of considerable portions of society are eligible for political party status as it considered that small minority groups must also have an opportunity to establish political parties and participate in elections with the aim of obtaining parliamentary representation. Furthermore it was concerned that compliance with the minimum membership requirement had to be demonstrated not only at the moment of their establishment and registration but on a continuing annual basis, with a concomitant intrusive power of inspection and threat of dissolution for which no justification could be discerned. Moreover, the uncertainty generated by the changes in the minimum membership requirement in recent years had imposed a disproportionate burden on political parties. Overall, the Court considered that no convincing explanation had been provided for increasing the minimum membership requirement.. In its view such a requirement would be justified only if it allowed the unhindered establishment and functioning of a plurality of political parties representing the interests of various population groups. It concluded, therefore, that such a radical measure as dissolution on a formal ground, applied to a long-established and law-abiding political party such as the applicant, could not be considered 'necessary in a democratic society'.

96. The second reason for the applicant's dissolution - the authorities' finding that it did not have a sufficient number of regional branches with more than 500 members, as required by the legal provisions then in force - stemmed from a requirement whose rationale was to prevent the establishment, functioning and participation in elections of regional parties, which, according to the Constitutional Court, were a threat to the territorial integrity and unity of the country. However, the Court considered that the argument this ban - which was only put in place in 2001, some ten years after Russia had started its democratic transition - was not necessary to protect Russia's fragile democratic institutions, its unity and its national security to be persuasive. In its view, the Government had not provided an explanation of why concerns have recently emerged regarding regional political parties and why such concerns were not present during the initial stages of transition in the early 1990s. It saw the present case as illustrative of a potential for miscarriages inherent in the indiscriminate banning of regional parties, which was moreover based on a calculation of the number of a party's regional branches. As it noted, the applicant was dissolved on the purely formal ground of having an insufficient number of regional branches and yet it was an all-Russian political party which had never advocated regional interests or separatist views, whose articles of association stated specifically that one of its aims was promotion of the unity of the country and of the peaceful coexistence of its multi-ethnic population and which had never been accused of any attempts to undermine Russia's territorial integrity, In those circumstances the Court understandably did not see how the applicant's dissolution served to achieve the legitimate aims cited by the

Government, namely the prevention of disorder or the protection of national security or the rights of others.

97. The third case in which dissolution was found to be unjustified concerned that of an association which aimed to provide its members with affordable and community-based housing purportedly to protect the rights of the owners of buildings that had been occupied by its members. However, the Court in *Association Rhino and Others v. Switzerland*[86], while reaffirming its well-established position that freedom of association can be restricted to protect the rights of others, stated that the power to impose any such restrictions should be used sparingly and could only be justified by convincing and compelling reasons.

98. In the present case, the dissolution had been sought after unsuccessful efforts to evict persons occupying the owner's buildings for many years and the Court found it particularly significant that the dissolution did not by itself remedy the occupation that was claimed to be unlawful. As a result, it considered that it could not be alleged that the dissolution had the practical and effective aim of protecting the rights of the owners within the meaning of Article 11(2) and the Court's relevant case-law so as to be necessary for the prevention of disorder, even supposing that any disorder had actually been caused by the association or its activities (which had not been established). Furthermore, the dissolution could not be regarded as proportionate to the aims pursued as other measures - such as actions to establish property rights - could have been taken that would have less seriously interfered with the right guaranteed by Article 11.

99. This judgment thus reaffirms the exceptional nature of dissolution and underlines the need to focus more on dealing with those responsible for the conduct considered objectionable than any association to which they belong unless these are inextricably entwined.

100. However, the case is also interesting for the following strong endorsement of the valuable contribution made by persons exercising their right to freedom of association:

> While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively[87].

101. Of course, such a contribution to the proper functioning of democracy is not made by all associations and in four cases the Court found that the activities of a social

[86] No. 48848/07, 11 October 2011.
[87] Paragraph 92.

movement, a political party, a football supporters association and a federation of hunting and fishing associations justified their dissolution.

102. In *Vona v. Hungary*[88], the dissolution of the Hungarian Guard Association, which had created the Hungarian Guard Movement ('the Movement'), whose stated purpose was to defend 'Hungary, defenceless physically, spiritually and intellectually' - was also found by the Court to have been a justified measure, in this instance one pursuing the aims of public safety, the prevention of disorder and the protection of the rights of others notwithstanding the applicant's allegation that no actual instances of disorder or violation of the rights of others had been demonstrated by the domestic courts to have been in place.

103. In considering the justifiability of dissolution, the Court reviewed its case law concerning the dissolution of political parties but noted that in this instance it was dealing with a social organisation. While echoing the observation noted above about the contribution of such organisations to the functioning of a democratic society[89], it distinguished them from political parties:

> 56. .... Social organisations do not normally enjoy such legal privileges and have, in principle, fewer opportunities to influence political decision-making. Many of them do not participate in public political life, though there is no strict separation between the various forms of associations in this respect, and their actual political relevance can be determined only on a case-by-case basis.
>
> Social movements may play an important role in the shaping of politics and policies, but – contrary to political parties – such organisations usually have less legally privileged opportunities to influence the political system. However, given the actual political impact which social organisations and movements have, when any danger to democracy is being assessed, regard must be had to the actual influence of such organisations.
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> 57. In the Court's view, the State is entitled to take preventive measures to protect democracy vis-à-vis such non-party entities as well, if a sufficiently imminent prejudice to the rights of others undermines the fundamental values upon which a democratic society rests and functions. One of such values is the cohabitation of members of society without racial segregation, without which a democratic society is inconceivable. The State cannot be required to wait, before intervening, until a political movement takes action to undermine democracy or has recourse to violence. Even if that movement has not made an attempt to seize power and the danger of its policy to democracy is not sufficiently imminent, the State is entitled to act preventively, if it is established that such a movement has started to take concrete steps in public life to implement a policy incompatible with the standards of the Convention and democracy (see Refah Partisi (the Welfare Party) and Others v. Turkey [GC], cited above, § 102).

104. The Court underlined that dissolution, given its gravity, required relevant and sufficient reasons just as much in the case of a social organisation as of a political party. Moreover, while considering that the justification for such a measure might be less compelling in the case of a social organisation because of its more limited possibilities of national influence than a political party and that restrictions on the latter should attract the greatest scrutiny, the Court also recognised that the level of scrutiny should depend on the nature and functions of the association.

105. As regards the activities of the applicant association and the Movement, the Court emphasised the significance of several rallies in which the participants had marched 'wearing military-looking uniforms and ominous armbands, and applying a military-

[88] No. 35943/10, 9 July 2013.
[89] See para. 100.

like formation, together with salutes and commands of the same kind'[90] in a manner reminiscent of the Nazi movement responsible for the mass extermination of Roma in Hungary. In the Court's view, such a rally was capable of conveying the message to those present that its organisers had the intention and ability to have recourse to a paramilitary organisation to achieve their aims and, having regard to the association's organisational links with the activists from the Movement who were present, its intimidating effect would have been multiplied by the rally being backed up by an association that benefited from legal recognition.

106. Not only was the ability and willingness to organise a paramilitary force seen by the Court as going beyond the use of peaceful and legal means of articulating political views but paramilitary demonstrations expressing racial division and implicitly calling for race-based action with an intimidating effect were to be regarded as exceeding the outer limit of the scope of protection secured by the Convention for expression. The Court considered that impugned activities clearly targeted the Roma minority, purportedly responsible for 'Gipsy criminality', and could be seen as constituting the first steps in the realisation of a certain 'law and order', which is essentially racist. As concrete steps in public life had thus been taken to implement a policy incompatible with the standards of the Convention and democracy, the authorities could not be required to await further developments before intervening to protect the rights of others. The Court emphasised that:

> Large-scale, co-ordinated intimidation – which is related to the advocacy of racially motivated policies, incompatible with the fundamental values of democracy – may justify State interference with freedom of association, even within the narrow margin of appreciation applicable in the present case. The reason for this is related to the negative consequences that such intimidation has on the political will of the people. While the incidental advocacy of anti-democratic ideas is not enough per se for banning a political party in the sense of compelling necessity (see paragraph 53 above) and even less so in the case of an association, which cannot make use of the special status granted to political parties, the entirety of the circumstances, in particular the coordinated and planned actions, may constitute sufficient and relevant reasons for such a measure, especially where other potential forms for the expression of otherwise shocking ideas are not directly affected[91].

107. The dissolution of the association, and consequently, the Movement, could not be regarded as disproportionate since earlier efforts to stop the unlawfulness of the Movement's activities had been met by purely formal compliance and the threat being posed could only be met by removing the organisational backup which the association provided to the Movement. Indeed, maintaining the association's lawful status could have been otherwise perceived as legitimation by the State for the threat posed by the Movement. Furthermore, it was seen as significant that no other sanction was imposed and the members of the association were not prevented from continuing political activities in other forms.

108. In the case of the political party, *Eusko Abertzale Ekintza – Acción Nacionalista Vasca (EAE-ANV) v. Spain (No 2)* [92], the Court followed the judgment in *Herri Batasuna and Batasuna v. Spain*[93], in which it had found the dissolution of the two applicant political parties to correspond to a 'pressing social need', including the maintenance of public safety, the prevention of disorder and the protection of the

[90] Paragraph 64.
[91] Paragraph 69.
[92] No. 40959/09, 15 January 2013.
[93] Nos. 25803/04 and 25817/04.

rights and freedoms of others. In that case, the Court considered that the national courts had reasonably concluded, after a detailed study of the evidence before them, that there was a link between the applicant parties and, a terrorist organisation, ETA. In view of the situation that had existed in Spain for many years with regard to terrorist attacks, the Court held that those links could objectively be considered as a threat for democracy. Furthermore, the Court considered that the domestic findings in this regard had to be placed in the context of an international wish to condemn the public defence of terrorism. In consequence, it considered that the acts and speeches imputable to the applicant political parties, taken together, created a clear image of the social model that was envisaged and advocated by them, which was in contradiction with the concept of a 'democratic society'. The fact that their projects were in contradiction with the concept of 'a democratic society' and entailed a considerable threat to Spanish democracy thus led the Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued. Unsurprisingly, a similar conclusion was reached in the *Eusko Abertzale Ekintza* case in respect of the dissolution of the applicant party since the acts and speeches imputable to it and its provision of support for Batasuna/ETA also gave a clear picture of a model of society conceived and advocated by it which was in contradiction with the concept of a democratic society.

109. Also upheld was the dissolution of an association of football supporters whose members had been involved in violent incidents with the police and other supporters, acts of incitement to hatred and discrimination and which had also displayed an offensive banner at a football match[94]. The Court, without further elaboration, found in *Association nouvelle des Boulogne Boys v. France*[95] that this step was proportionate to the legitimate aim of preventing disorder and crime.

110. Furthermore, dissolution was considered acceptable in *AGVPS-Bacău v. Romania*[96] in respect of a federation of hunting and fishing associations on the ground that it had not obtained the status of public utility or stopped issuing licences for hunting. The Court emphasised that it had had a reasonable opportunity to bring its statutes into compliance with the law and indeed had not responded to the request to bring itself into compliance with the law and had not sought to challenge either the alleged non-conformity of its statute with the law or the grant of public utility status to a rival federation. In the circumstances, the Court regarded the reasons given by the authorities to dissolve the applicant federation as 'relevant and sufficient' and the action taken was proportionate to the legitimate aim pursued and therefore necessary in a democratic society.

[94] It stated: 'Pedophiles , unemployed, inbred , Welcome to the Sticks'.
[95] (dec.), no. 6468/09, 22 February 2011.
[96] No. 19750/03, 9 November 2010.