

Human rights in culturally diverse societies



- ▶ Guidelines adopted by the Committee of Ministers
- ▶ Compilation of Council of Europe standards
- ▶ Proceedings of the High-level Seminar

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

HUMAN RIGHTS IN CULTURALLY DIVERSE SOCIETIES

GUIDELINES ADOPTED
BY THE COMMITTEE OF MINISTERS AND
COMPILATION OF COUNCIL OF EUROPE STANDARDS

Council of Europe

French edition:

*Droits de l'homme dans les sociétés
culturellement diverses*
*Lignes directrices adoptées par le Comité
des Ministres et Compilation des normes du
Conseil de l'Europe*

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Table of Content

Preface

Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies

Préambule	9
I. Relevant general principles	11
<i>Obligation to respect human rights</i>	11
<i>Human rights as a common basis</i>	11
<i>Positive obligations</i>	11
<i>Limitations and restrictions</i>	11
<i>Balancing of rights</i>	11
<i>Marging of appreciation</i>	12
<i>Living together</i>	12
II. Fundamental freedoms	12
A. Freedom of thought, conscience and religion	12
<i>Impartiality</i>	13
<i>Diversity of approaches</i>	13
<i>Legal status and autonomy of religious communities</i>	14
<i>Education of children</i>	14
B. Freedom of expression	14
C. Freedom of assembly and association	15
III. Equality and non-discrimination	16
<i>Prohibition of discrimination in the enjoyment of human rights</i>	16
<i>National legislation</i>	16
<i>Promotion of the principle of equality</i>	16
<i>Positive action</i>	16
<i>Multiple discrimination</i>	17
<i>Gender equality</i>	17
<i>Elimination of discrimination in all its forms in all areas of life</i>	17
<i>Law enforcement measures</i>	17
IV. Countering hatred and violence	17
<i>Countering stereotypes</i>	17
<i>Combating racism and xenophobia</i>	17
<i>Combating hate crime and hate speech</i>	18
<i>Protection of the right to life and of the right to freedom from torture and Inhuman or degrading treatment or punishment</i>	18
<i>International protection</i>	19
<i>Training for the judiciary and other authorities</i>	20

V.	Participation, social inclusion and dialogue	20
	<i>Participation in the democratic process</i>	20
	<i>Participation in the making of legislation</i>	20
	<i>Representation in public administration and decision-making bodies</i>	20
	<i>Participation and inclusion in social, economic and cultural life</i>	20
	<i>Rights concerning identity</i>	21
	<i>Reasonable accommodation</i>	21
	<i>Inclusion in the workplace</i>	21
	<i>Participation and inclusion of youth</i>	21
	<i>Participation and inclusion of foreign residents</i>	22
	<i>Promotion of intercultural dialogue</i>	22
VI.	Safeguards and remedies	22
	<i>Access to rights</i>	22
	<i>Access to justice</i>	22
	<i>Sharing of the burden of proof</i>	23
	<i>Access to information and consultation</i>	23
VII.	Other relevant actors	23
	<i>The role of national human rights institutions</i>	23
	<i>The role of civil society</i>	23
	<i>The role of the media and information society</i>	24
	<i>Responsibility of opinion leaders</i>	24
	<i>The role of the private sector</i>	24
VIII.	Education and awareness-raising	24
	<i>Human rights education and training</i>	24
	<i>Raising awareness of human rights</i>	25
IX.	Other measures	25
	<i>National Strategies</i>	25
	<i>Action plans</i>	25
	<i>Indicators</i>	25

PREFACE



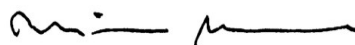
These are not easy days for European societies. The surge in terrorism and violent extremism on our continent, the massive flow of migrants and refugees into our nations and ongoing economic hardship are placing pressure on our communities. In many places populism and xenophobia are on the rise and our commitment to tolerance and diversity is feeling the strain.

It is a troubling development, and one we cannot ignore. Diversity is an asset to our countries – economically, socially and politically – and we must defend it. Europe has always thrived on its mix of heritage and culture, which enriches our shared way of life whether it flows from communities who have lived here for generations, or from those who have arrived more recently.

These guidelines are therefore aimed at helping Council of Europe member States maintain and manage diversity by protecting the human rights which allow different faiths and cultures to live together. They are based, primarily, on our standards relating to the principles of freedom of thought, conscience and religion, as enshrined in the European Convention on Human Rights. However, rather than consider these standards in isolation, we have sought to rethink them alongside other human rights, including freedom of expression, freedom of assembly and association and the right to private life. In this way we hope to provide member States with a meaningful and practical tool which reflects the often complex interplay between different freedoms in increasingly diverse societies.

One particularly difficult challenge is guaranteeing freedom of expression and the right to express ideas which “offend, shock or disturb” while preventing incitement to hate or violence that is aimed at individuals or groups on the basis of their traditions or beliefs. We see many of our member States grappling with this dilemma. In Europe, the best compass we have as we walk the careful line between free speech and hate speech is the case law of the European Court of Human Rights, which has inspired much of the guidance.

By leaning on the judgments of the Court and our common standards, European States will be better placed to build inclusive societies in which difference is respected while core liberties and rights are upheld. The Council of Europe is a dedicated partner in this shared endeavour and we will continue to support our members in every way we can.



Thorbjørn Jagland,
Secretary General of the Council of Europe
Strasbourg, 8 June 2016

**GUIDELINES OF THE COMMITTEE OF MINISTERS
TO MEMBER STATES ON THE PROTECTION AND PROMOTION
OF HUMAN RIGHTS IN CULTURALLY DIVERSE SOCIETIES**

*Adopted by the Committee of Ministers on 2 March 2016
at the 1249th meeting of the Ministers' Deputies*

Preamble

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting common standards and carrying out activities in the field of human rights;

Reaffirming the principle of equal dignity of all human beings and the principle of full and equal enjoyment of human rights and fundamental freedoms by all members of society;

Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention on Human Rights (adopted in 1950, ETS No. 5) and the Protocols thereto, and where relevant their obligations arising from the European Social Charter (adopted in 1961, ETS No. 35, and from its revised version adopted in 1996, ETS No. 163), and from other European and international human rights instruments, in so far as they have ratified them;

Reaffirming that human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be enjoyed by everyone without discrimination;

Recalling that pluralism, which is one of the foundations of our democratic societies, is built upon the respect of human rights and on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious and other beliefs, artistic and socio-economic ideas, works and concepts;

Conscious of the increasing cultural diversity in European societies and underlining that diversity is a source of enrichment which calls for mutual understanding and respect for each other;

Underlining that managing cultural diversity in full respect of the principles of democracy, human rights and the rule of law is a common challenge for all societies throughout Europe and beyond, and that integration strategies should take appropriate account of diversity;

Considering that, for the purposes of these guidelines, the exercise of the rights mentioned therein must be guaranteed for all individuals without discrimination, including on grounds of their affiliation to any group, notwithstanding the possibility for the State to take positive action;

Underlining that living in a democratic society entails responsibilities and duties with regard to other persons and groups;

Being convinced that the satisfaction of basic human needs is a requirement intrinsic to the dignity of every human being and constitutes a pre-condition for the genuine enjoyment of human rights and fundamental freedoms;

Stressing that social cohesion and inclusion help to ensure the welfare of all members of society, minimise disparities and avoid polarisation;

Being aware that education, including human rights education, plays an essential role in preventing the rise of violence, extremism, racism, xenophobia, stigmatisation and all other forms of discrimination and intolerance;

Noting with regret the continuing lack of understanding and exclusion, xenophobic attitudes, hate speech, and even extremism and violence between individuals or groups forming culturally diverse societies in Europe and beyond;

Being convinced that full and equal enjoyment of human rights and fundamental freedoms by all members of democratic and culturally diverse societies directly contributes to peace and stability and may help to prevent intolerance potentially leading to violence and conflicts,

1. adopts the following guidelines which provide practical advice on how to address the above challenges and ensure better protection of human rights and fundamental freedoms in the context of culturally diverse societies, based on respect for the inherent and equal dignity of every human being;
2. invites member States to:
 - take appropriate account of the principles set out in these guidelines when reviewing relevant legislation and practice;
 - ensure the dissemination of the guidelines among competent authorities and stakeholders;
3. agrees to examine the follow-up given by member States to the present guidelines five years after their adoption.

I. Relevant general principles

Obligation to respect human rights

1. Member States are under an obligation to secure the effective enjoyment of all human rights and fundamental freedoms enshrined in the European Convention on Human Rights and in other binding human rights treaties to which they are parties for everyone within their jurisdiction.

Human rights as a common basis

2. Member States should ensure that the policies and actions of public authorities comply with human rights obligations.

Positive obligations

3. To comply with their obligations, member States may need to take positive steps to secure the effective enjoyment of human rights and fundamental freedoms for persons within their jurisdiction. This may also involve the protection of the rights and freedoms of individuals against the acts or omissions of others. Member States should promote equal opportunities and good relations in society based on mutual respect for human rights and fundamental freedoms.

Limitations and restrictions

4. In accordance with the European Convention on Human Rights, member States must ensure that any limitations and restrictions on the exercise of freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association are prescribed by law, are necessary in a democratic society and pursue a legitimate aim as set out in the Convention.

Balancing of rights

5. Member States should strive to find a fair balance between conflicting interests which may result from the exercise of competing human rights and fundamental freedoms.

Margin of appreciation

6. Member States enjoy a margin of appreciation in how they apply and implement the European Convention on Human Rights depending on the circumstances of the case and the rights and freedoms engaged.

Living together

7. Member States should strive to ensure conditions that enable individuals and groups to live together in their diversity and allow the expression of pluralism, tolerance and broadmindedness that are hallmarks of a democratic society. This protection of “living together” can be linked to the legitimate aim of protecting the rights and freedoms of others. In this respect, although sometimes it is necessary for individual interests to be subordinated to those of a group, democracy does not simply mean that the views of a majority shall always prevail: a balance should be achieved which ensures the fair treatment of the majority and the minority. Pluralism and democracy should also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups which are justified in order to maintain and promote the ideals and values of a democratic society.

II. Fundamental freedoms

8. Member States must ensure that freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association are adequately and effectively guaranteed in their legal systems to all persons within their jurisdiction without discrimination on any ground, and that these national provisions are properly enforced.

A. Freedom of thought, conscience and religion

9. Member States must ensure respect for freedom of thought, conscience and religion, which constitutes one of the essential foundations of a democratic and pluralist society and encompasses two components:
 - the freedom of thought, conscience and religion as a matter of individual conscience (internal freedom), including the freedom to hold or not to hold or change one’s religion or belief. This freedom in its internal dimension is an absolute right and may not be limited under any circumstances;

- the freedom to manifest one's religion or belief (external freedom), whether in community with others, in public and within the circle of those whose faith one shares, or alone and in private. It includes the right to manifest one's religion or belief in worship, teaching, practice and observance. This freedom to manifest one's religion or belief may be subject to certain limitations, but only to those which are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
10. The freedom to manifest one's religion or beliefs also includes the right of every individual not to be obliged to disclose his or her religion or beliefs and not to be obliged to act in such way that one can conclude that he or she holds – or does not hold – such religion or beliefs. This is without prejudice to situations where the disclosure of religion or beliefs is necessary to enable persons to benefit from a special privilege made available in domestic law on the grounds of religion or beliefs.

Impartiality

11. The member States' role as facilitators for impartially creating the conditions for the exercise of various religions and beliefs is conducive to public order, religious harmony and tolerance in a democratic society.
12. This impartiality is incompatible with any power on the part of member States to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed.
13. Member States should promote mutual tolerance and refrain from taking sides in religious disputes.
14. In remaining impartial, member States should also be inclusive and diversity friendly.

Diversity of approaches

15. In view of the diversity of approaches in Europe in the sphere of cultural and historical development and the place of religion in society, member States are afforded a margin of appreciation in determining the steps to be taken to ensure compliance with the European Convention on Human Rights in this sphere. A reference to a tradition cannot, however, relieve them of their obligation to respect the rights and freedoms enshrined in the European Convention on Human Rights.

Legal status and autonomy of religious communities

16. Member States are reminded of their obligation to ensure that all religious communities which respect shared fundamental values are able to benefit from appropriate legal status and autonomy guaranteeing the exercise of freedom of religion.
17. Member States should ensure that religious communities and their members are able, in compliance with the national law:
 - a. to practice their faith publicly and freely, in places of worship designed for that purpose by themselves or in other places accessible to the general public, in accordance with their own rites and customs;
 - b. to make their opinion publicly known without being subjected to censorship and also exercise the right to freedom of expression, freedom of peaceful assembly and the freedom to use the media.

Education of children

18. In the exercise of any functions which they assume in relation to education and teaching, member States should, in accordance with European Convention on Human Rights, respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. They are afforded a margin of appreciation on whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted. It should, however, respect the freedom of thought, conscience and religion of others.

B. Freedom of expression

19. Member States must ensure respect for freedom of expression, which equally constitutes one of the essential foundations of a democratic and pluralist society and one of the basic conditions for its progress and for the development of every human being. This right includes the freedom to hold opinions and receive and impart information and ideas without interference by public authorities and regardless of frontiers. It is necessary for the fulfilment and enjoyment of a wide range of other human rights, including the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs.

20. Member States should ensure that freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that may criticise, offend, shock or disturb the State or individuals or groups within society.
21. The exercise of the right to freedom of expression carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but only in so far as such restrictions are provided for by national law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights or the reputation of others, for the prevention of disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Opinion makers and opinion leaders should be aware of the responsibilities which are inherent to free speech in culturally diverse societies.
22. Member States should remember that “hate speech” is not protected under the European Convention on Human Rights.

C. Freedom of assembly and association

23. Member States must respect freedom of peaceful assembly and freedom of association. This is crucial to the functioning of a pluralist and democratic society and instrumental for individuals and groups to collectively address and resolve challenges and issues that are important to society.
24. No restrictions shall be placed on the exercise of these rights other than those prescribed by law and 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 shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, the police or the State administration.
25. Member States should encourage the participation of individuals and groups in the democratic process through the creation of a favourable environment conducive to the work of associations and political parties in which individuals and groups may interact freely with each other and pursue common objectives collectively.

26. Member States should avoid unduly interfering with freedom of peaceful assembly and association, and also secure its effective enjoyment in the sphere of relations between individuals. They should protect the peaceful exercise of freedom of assembly, including through measures to ensure that counter-demonstrations do not affect the right to demonstrate.

III. Equality and non-discrimination

Prohibition of discrimination in the enjoyment of human rights

27. Member States must secure the enjoyment of the rights and freedoms set forth in the European Convention on Human Rights without discrimination on any ground.

National legislation

28. Member States must respect the fundamental principle according to which all persons are equal before the law and are entitled to equal protection under the law without discrimination on any ground. Member States should ensure that their national legislation recognises and provides full and effective guarantees for the principle of equality and the prohibition of discrimination to all members of society.

Promotion of the principle of equality

29. Member States should ensure the promotion of the principle of equality and the right of every person to be free from all forms of discrimination on any ground.

Positive action

30. Member States should bear in mind that the prohibition of discrimination is violated when persons in analogous situations are treated differently without an objective and reasonable justification but also when, without such justification, persons whose situations are significantly different are not treated differently. Member States should take all appropriate measures, including positive action, to ensure full respect for the prohibition of discrimination.

Multiple discrimination

31. Member States should recognise that individuals may require effective measures to solve the problem of multiple discrimination, particularly against women and the most vulnerable groups of individuals.

Gender equality

32. Member States should ensure equality between women and men in culturally diverse societies and the systematic integration of the gender equality dimension in the framework of securing human rights and fundamental freedoms. Gender equality should be ensured regardless of traditional or cultural attitudes.

Elimination of discrimination in all its forms in all areas of life

33. Member States should take all necessary measures to eliminate, in law and practice, discrimination on any grounds in all areas of life, such as employment, education, health care, culture, housing, access to goods and services, and access to justice and decision making both in the public and private sectors.

Law enforcement measures

34. Member States should ensure that law enforcement measures do not result in the violation of human rights or in the ostracism of and discrimination against individuals.

IV. Countering hatred and violence

Countering stereotypes

35. Member States should promote mutual respect and diversity and counter negative stereotypes, prejudices and any form of intolerance.

Combating racism and xenophobia

36. Member States should ensure that all available means are used to combat racism and xenophobia, which are a particular affront to human dignity, thereby reinforcing the vision of a democratic society in which diversity is not perceived as a threat but as a source of enrichment.

37. Member States should ensure special vigilance and a vigorous reaction to any act of racist and xenophobic nature, including acts committed via computer systems.
38. Member States should take appropriate action against organisations that promote hatred, intolerance and xenophobia. This may include the dissolution of organisations that incite racial hatred. Member States should provide measures to suppress public financing of such organisations. Efforts should be taken to ensure that these provisions are effectively enforced.
39. Member States should address the problem of racism and violence in sports.

Combating hate crime and hate speech

40. Member States should ensure that various forms of hate crime, including acts of violence and hate speech, including public incitement to hatred and violence, are punishable under their national law.
41. Member States should take measures to prevent and combat cases of hate crime and hate speech, in particular by carrying out effective investigations in order to avoid impunity.

Protection of the right to life and of the right to freedom from torture and inhuman or degrading treatment or punishment

42. Member States are required to adopt reasonable and effective measures and policies designed to ensure that individuals within their jurisdiction, including persons belonging to vulnerable or minority groups, are not subjected to attacks violating their right to life or their right to freedom from torture and inhuman or degrading treatment or punishment, irrespective of whether such acts are committed by public officials or private individuals.
43. Member States must combat all acts of violence and ill-treatment targeting persons belonging to vulnerable or minority groups and bring perpetrators to justice. They must ensure that their national authorities conduct prompt and effective investigations into such incidents, meeting the requirements of the fundamental rights enshrined in Articles 2 and 3 of the European Convention on Human Rights, even in the absence of a formal complaint, if there are sufficiently clear

indications that an attack violating the right to life or the right to freedom from torture and inhuman or degrading treatment or punishment might have occurred.

- 44.¹ Member States should consistently combat any form of physical, sexual, psychological and economic violence particularly directed against women and girls (including stalking, sexual violence, forced and child marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment, crimes committed in the name of so-called "honour", aiding or abetting and attempt to commit any of these offences), and violence against persons on the basis of their sexual orientation or gender identity, including situations when violence is perpetrated under the pretext of a cultural and religious prescription or practice. The same would apply to other persons in vulnerable situations, such as children and persons with disabilities. They should strive to adopt adequate legislation and introduce initiatives to prevent such violence, protect the victims and prosecute the perpetrators.
45. With a view to effective investigation and prosecution of violent criminal offences, member States should take all appropriate legislative, administrative and other measures to uncover any racial, xenophobic or religious motive behind an attack violating the right to life or the freedom from torture and inhuman or degrading treatment or punishment and to establish whether or not hatred or prejudice might have played a role in the events, even when the attack is inflicted by private individuals.

International protection

46. The right to life and the prohibition of torture may also encompass protection against expulsion if there are substantial grounds to believe that a person if deported would face a real risk of being subjected to treatment contrary to Articles 2 and 3 of the European Convention on Human Rights, in view of persecutions based on race, religion, nationality, membership of a particular social group or political opinions.

1. When these guidelines were adopted, the Representative of the Russian Federation reserved the right of his government to comply or not with paragraph 44 as far as the reference to sexual orientation or gender identity is concerned.

47. In order to adopt appropriate measures to counter hatred and violence and prevent persecutions, member States should co-operate among themselves and within the framework of international organisations and initiatives.

Training for the judiciary and other authorities

48. Member States are encouraged to ensure that members of the judiciary, prosecution service, law enforcement agencies and other relevant services have access to training regarding the national and international standards related to the effective fight against hatred and violence.

V. Participation, social inclusion and dialogue

Participation in the democratic process

49. Member States should adopt specific strategies and targeted policies to ensure that every member of society has adequate opportunities to effectively participate in public affairs and democratic decision making, which is an essential condition for social cohesion.

Participation in the making of legislation

50. Member States are encouraged, as far as possible, to enable all relevant segments of society, including non-governmental organisations, to participate in the preparation and consideration of legislation so as to ensure inclusivity and the genuine recognition of the diversity within societies.

Representation in public administration and decision-making bodies

51. Member States should strive for adequate representation of social diversity in all structures of decision making bodies and public administration including the judiciary, law-enforcement agencies and executive bodies.

Participation and inclusion in social, economic and cultural life

52. Member States should strive for the effective participation on an equal footing of all members of society, including persons belonging to vulnerable and minority groups, in social, economic and cultural life, which is an essential precondition for equal opportunities in practice.

53. Member States should formulate and implement policies in relevant areas, such as education and training, culture, employment, access to healthcare and housing and access to goods and services, in order to support effective participation in these fields on an equal footing and inclusion for all members of society, which is essential for successful integration.

Rights concerning identity

54. Member States should recognise the particular needs of persons belonging to minorities, bearing in mind the value of cultural diversity.
55. Member States are encouraged to promote the conditions necessary for persons belonging to national, linguistic and religious minorities to maintain and develop their culture and preserve the essential elements of their identity.
56. Member States should fully respect the principle of the individual's voluntary self-identification as belonging to a specific group in society.

Reasonable accommodation

57. With a view to guaranteeing equality that is effective, and not merely formal, in the right to freedom of thought, conscience and religion, member States are invited to seek reasonable accommodation, where appropriate, when exercising their margin of appreciation.

Inclusion in the workplace

58. Member States are encouraged to provide diversity training and advisory services concerning tolerance and non-discrimination in the workplace. This should include advice as regards policies to accommodate religious and cultural diversity in the workplace.

Participation and inclusion of youth

59. Member States should adopt policies or measures designed to promote youth participation in society, including the participation of young people belonging to vulnerable and minority groups. They should ensure a democratic and cultural environment of respect for young people and take into account their diverse needs, circumstances and aspirations. They should also encourage and support initiatives by young people which promote mutual respect, dialogue, inclusion and responsibility for others in culturally diverse societies.

Participation and inclusion of foreign residents

60. Member States should promote, in so far as appropriate, equal opportunities for foreign residents, for example through the provision of adequate information about their rights and duties in society. Member States are encouraged to consider granting foreigners who are lawfully resident on their territory the right to vote and stand for election at the local level provided they fulfil the requirements set out in their national law.

Promotion of intercultural dialogue

61. Member States should encourage and support intercultural dialogue, including its religious dimension, to promote a spirit of inclusion and create an open and respectful exchange of views between individuals, groups and associations with different cultural or religious backgrounds, on the basis of mutual respect and understanding. To this end, they should also treat religious communities or communities representing different cultural backgrounds as partners in the development of inclusive and mutually supportive societies, while respecting the importance of impartiality.

VI. Safeguards and remedies

Access to rights

62. Member States should implement concrete measures, including at the regional and local level, and raise awareness thereof, to allow everyone the full and equal enjoyment and exercise of their rights in culturally diverse societies without discrimination on any ground.

Access to justice

63. Member States must ensure access to justice and effective remedies before national authorities in cases where human rights are violated. In order to ensure that this access to justice and remedies is provided on an equal footing in culturally diverse societies, member States are encouraged to establish appropriate legal aid schemes.
64. Member States are encouraged to establish accessible procedures and promote alternative dispute resolution processes such as mediation, conciliation and arbitration in the context of culturally diverse societies.

Sharing of the burden of proof

65. Member States should consider providing in civil and administrative law, that if persons who consider themselves victims of a discriminatory act establish before a court or any other competent authority *prima facie* evidence of facts from which it may be presumed that there has been discrimination, it should be for the respondent to prove that there has been no discrimination.

Access to information and consultation

66. Member States should explore ways of ensuring that everyone has access without discrimination and in a timely manner to sufficient information about his or her rights.

VII. Other relevant actors

The role of national human rights institutions

67. Member States should consider establishing, if they have not yet done so, an effective, pluralist and independent national human rights institution. They should also ensure the existence of appropriate conditions for the fulfilment of the institution's human rights mission, including sufficient funding. They should consider establishing, where appropriate, branches of such institutions at the regional or local level to facilitate access for those whose rights have been violated. They should also encourage national human rights institutions to pay appropriate attention to supporting respect for human rights in the context of culturally diverse societies.

The role of civil society

68. Member States should take concrete measures to create an environment conducive to the development of civil society, including defenders of human rights, and make consultation and collaboration with civil society a common practice when drafting policies and action plans at national, regional and local levels, with a view to protecting and promoting human rights in culturally diverse societies.

The role of the media and information society

69. Member States are reminded that media and the information society should play an active role in promoting mutual understanding, respect and cultural diversity, and in countering negative stereotypes, prejudices and any form of intolerance.

Responsibility of opinion leaders

70. Opinion leaders, including political and religious leaders, should speak and act resolutely in such a way as to foster a climate of mutual understanding, respect and diversity, based on universally recognised human rights.

The role of the private sector

71. Member States are reminded that the private sector can play an active role in promoting cultural diversity and countering negative stereotypes in their operation and activities and that they should be encouraged to do so.

VIII. Education and awareness-raising

Human rights education and training

72. Member States should guarantee the fundamental right of children to education in accordance with the European Convention on Human Rights, and the relevant case law of the European Court of Human Rights and should provide such education in an objective, critical and pluralistic manner.
73. Member States should adopt practical measures to promote education as a key to combating intolerance, breaking down stereotypes, developing intercultural dialogue, including its religious dimension, building trust and mutual respect and promoting sincere support for the shared values of living together.
74. To this end, member States should consider adopting education policies that include the principles and values of education for democratic citizenship and human rights education. Such education policies should also be formulated as part of integration policies and cover formal, non-formal and informal education. This should also include the teaching of diversity and promoting the attitudes of social inclusion, mutual understanding and responsibility towards others. Member States

should also review curricula and teaching materials and ensure participatory learning methods and inclusive environments at educational institutions.

Raising awareness of human rights

75. Member States should assess and address the needs of expertise of public officials and other professionals concerning the protection of human rights, to ensure that they have thorough and up-to-date knowledge of the human rights standards and instruments, including relevant national law and practice, and appropriate guidelines on how to take into account cultural diversity when interacting with individuals and groups in their field of competence.
76. Member States should also examine the need for awareness-raising activities targeting the general public.

IX. Other measures

National strategies

77. Member States should consider adopting a strategic approach towards the human rights challenges of culturally diverse societies.

Action plans

78. Member States should consider encouraging public authorities, including at local and regional level, to adopt a strategic approach towards the human rights challenges of culturally diverse societies by integrating the relevant issues into the related action plans adopted at national level.

Indicators

79. Member States should consider monitoring the impact of the measures taken, for instance by developing, where appropriate, human rights indicators to measure their impact in the context of culturally diverse societies. Adequate systems should be established to monitor the provision of health care, education or social services and social aid.

Table of Content

Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights

Preface	29
1. Introduction	31
i. The present compilation in the broader context of the Council of Europe values and work	32
ii. Short presentation of the various relevant Council of Europe bodies and their mandate	35
2. General principles and definitions	41
i. The right to freedom of thought, conscience and religion as a pillar of democratic society	41
ii. Internal and external aspects of freedom of thought, conscience and religion	43
iii. Limitations	43
- "prescribed by law"	44
- "legitimate aim"	44
- "necessary in a democratic society"	45
iv. Positive obligations	46
v. Need for balancing between rights	47
vi. Margin of appreciation	49
vii. Duty of neutrality and impartiality of the State	52
viii. Non-discrimination on grounds of thought, conscience and religion	53
3. Thematic issues	55
A. Individual right to freedom of thought, conscience and religion	55
i. Freedom to manifest one's thought, conscience and religion	56
- General scope	57
- Limitations	59
ii. Wearing of religious symbols and clothing (dress code)	61
iii. Manifestation of religion and belief in various settings	65
iv. Rights of persons deprived of their liberty	70
v. Conscientious objection to military service	73
vi. Situation in which individuals are obliged to disclose or act against their religion or beliefs	76
vii. Medical treatment issues	79
viii. Proselytism	81
ix. Right to education of children in conformity with the parents' religion and philosophical convictions	83

x. Specific questions in relation to children's right to freedom of thought, conscience and religion	90
B. State relations with religious communities	92
i. Autonomy and rights of religious communities	93
ii. Registration and recognition	101
iii. Assessment of religious movements (sects)	104
iv. Property	107
v. Financing and taxation	110
C. Protection of individuals on accounts of their thought, conscience and religion	112
i. Issues in relation to Articles 2 and 3 of the European Convention on Human Rights	112
ii. Protection of persons belonging to minority religious groups	113
iii. Hate speech and hate crime on grounds of thoughts, conscience and religion	118
Hate speech	118
Hate crime	125
iv. Matters relating to international protection on grounds of thought, conscience and religion	128
APPENDIX - Selection of relevant good practices from member States	131
- The promotion of awareness and tolerance of religious diversity	131
- Promoting intercultural dialogue	133
- Thematic issues	137
A. Individual right to freedom of thought, conscience and religion	137
Wearing of religious symbols and clothing (dress code)	137
Manifestation of religion and belief in various settings	138
- Individual rights	138
- At the workplace	138
- In the armed forces	139
- At the reception centre	140
Rights of persons deprived of their liberty	141
Situations in which individuals are obliged to disclose or act against their religion of beliefs	143
Medical treatment issues	143
Right to education of children in conformity with the parent's religious and philosophical convictions	144
B. State relations with religious communities	147
Autonomy and rights of religious communities	147
Registration and recognition	149

Assessment of religious movements (sects)	151
Property	151
Financing and taxation	152
C. Protection of individuals on account of their thought, conscience and religion	154
Protection of persons belonging to minority religious groups	154
- Legislation and institutional frameworks	154
- Policies	155
- Surveys, awareness-raising and training	156
Hate speech and hate crime on grounds of thought, conscience and religion	158
- Legislative framework	158
- Policies	160
- Institutional structures, awareness-raising and training	161
Matters relating to international protection on grounds of thought, conscience and religion	163
Index of cases	165

**COMPILATION OF COUNCIL OF EUROPE STANDARDS
RELATING TO THE PRINCIPLES OF FREEDOM OF THOUGHT,
CONSCIENCE AND RELIGION AND LINKS TO OTHER HUMAN RIGHTS**

*Adopted by the Steering Committee
for Human Rights (CDDH) on 19 June 2015*

PREFACE



As I write, Europe finds itself gripped by a new and dangerous terror threat. Dangerous because it is well-organised, technologically savvy and – as has been demonstrated by the recent attacks in Paris and elsewhere – capable of hurting us from within our own cities, at the hands of our own citizens.

At the forefront is a group who refer to themselves as “Islamic State”. But they are not a state, despite the attempts by their leaders to emulate a caliphate. Nor are they Islamic, and this cannot be said enough. The hateful and murderous acts of this organisation find no justification in the Koran or any other religious text. With their brutality they offend millions of peace-loving Muslims, whose religion they appropriate and pervert.

We have a duty to draw this line very clearly: terror has no religion. As European States take the necessary steps to enhance our security, governments must studiously avoid action which maligns or marginalises any religious group. Even policies initiated with the best of intentions can risk such unintended consequences. We have already seen numerous calls by populists and petty nationalists for restrictions on Islamic practice and expression within our societies, as they attempt to exploit the current climate of fear.

Such a backlash will only bring us more violence. If we act in ways which suggest that Islam is the problem, we simply reaffirm terrorist propaganda and provide a boost to the extremists now scouring our communities in the search for angry and alienated recruits. Far better we strengthen ourselves by recommitting to the freedom of thought on which modern Europe has been built, and by defending the pluralism terrorists seek to destroy.

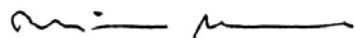
To assist States in this endeavour this overview brings together, for the first time, the legal standards and guidance relating to Article 9 of the European Convention of Human Rights, under which individuals have an absolute and unqualified right to hold any religious belief, which they may then manifest and practice with others and in public. This freedom is

essential in democracies in which everyone's rights and beliefs are respected, and it is a precondition for living together successfully in diverse societies.

Sometimes balances need to be struck. Freedom of thought, religion and consciousness must co-exist, for example, with freedom of expression and of association. Very often these liberties complement one and other. However, conflicts can occur. Freedom of expression permits criticism of religious conviction, but this should never cross into stigmatising an entire group on the basis of their beliefs. In other instances it is necessary to impose limitations on freedom of thought, religion and conscience for the sake of public safety and in order to protect the rights of other groups and society at large. The European Court of Human Rights respects the discretion of national authorities to deal with such sensitive matters in ways which reflect their own cultural and historical complexities. However, in order to uphold the Convention, any limitations on religious expression must always be prescribed by a clear and accessible law, have a legitimate aim, and be proportionate and necessary in a democratic society.

In order to help States navigate these dilemmas, the guidance that follows presents the basic principles for action, as enshrined in the Convention and the case law of the Court. These principles have been applied to a number of pertinent issues facing societies, such as the wearing of religious symbols and clothing in public; the manifestation of religion and belief in prisons; the mandatory indication of one's religious affiliation on official documents; the autonomy of religious communities; and the question of how to combat hate speech and hate crime. In addition to existing legal standards, we have also drawn on recommendations to member States adopted by the Committee of Ministers and stemming from monitoring bodies such as the European Commission against Racism and Intolerance (ECRI), the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Committee of Social Rights, and other Council of Europe bodies namely the Parliamentary Assembly, the Commissioner for Human Rights and the European Commission for Democracy through Law (Venice Commission).

I hope all of our States will find it a timely and useful contribution.



Secretary General of the Council of Europe
Strasbourg, 7 December 2015

1. INTRODUCTION

1. The present compilation was prepared in response to a proposal stemming from a thematic debate in the Council of Europe's Committee of Ministers, in December 2012, on "freedom of religion and the situation of religious minorities".² The aim of the compilation is to provide a comprehensive overview of all the existing Council of Europe standards relating to the principles of freedom of thought, conscience and religion and the links to other rights contained in the European Convention on Human Rights as well as the jurisprudence of the European Court of Human Rights interpreting these rights. The legal standards set by the European Convention on Human Rights are supplemented by other Council of Europe treaties. In addition to legal standards, there are also recommendations and guidelines adopted by other Council of Europe bodies³. These documents are not legally binding, but do nevertheless form part of the Council of Europe compendium of standards.⁴ The existing standards are presented in the compilation in a non-hierarchical manner under a number of relevant themes so as to stress the complementary role of the various Council of Europe bodies. The compilation has been complemented with a compendium of national good practices.⁵ A selection of relevant good practices from member States appears in the appendix to the compilation.

2. Ministers' Deputies 1158th meeting, 12-13 December 2012, item 1.6 Thematic debate: "Freedom of religion and the situation of religious minorities", see Chairperson's summing-up.

3. Committee of Ministers, Parliamentary Assembly and other institutions such as, for example, the Congress of Local and Regional Authorities, the Commissioner for Human Rights and the Venice Commission

4. See document SG(2014)1 Final. Report by the Secretary General of the Council of Europe on the state of democracy, human rights and rule of law in Europe, Executive Summary, "Standard-Setting".

5. The contributions received from a large number of member States are contained in document CDDH-DC(2014)004rev2 which will be updated regularly on the CDDH's website on "Human rights in cultural diverse societies".

2. The compilation has been prepared by the Steering Committee for Human Rights (CDDH) within the framework of its work on the protection and promotion of human rights in culturally diverse societies. The CDDH's on-going work on human rights in culturally diverse societies also includes the elaboration of guidelines from the Committee of Ministers to member States on the effective implementation of the relevant standards in this field. For the drafting work of preparing the compilation and the guidelines the CDDH set up a working group, Drafting Group on Human Rights in Culturally Diverse Societies (CDDH-DC), which met twice in 2014, in its restricted composition⁶, to draft the compilation, and three times in the course of 2014 and 2015, in its enlarged composition⁷, to draft the guidelines.

i. The present compilation in the broader context of the Council of Europe values and work

3. The Council of Europe builds in its work upon the universal values of human rights, democracy and rule of law reflected in the United Nations Universal Declaration of Human Rights as well as in a number of treaties, recommendations and guidelines developed at European level, of which the most important is the European Convention of Human Rights (hereafter referred to as "the Convention")⁸. These texts set forward a number of standards relating to the principles of freedom of thought, conscience and religion and the links to other Convention rights, in particular freedom of expression and freedom of association.

4. Since the first Council of Europe's Summit, in Vienna in 1993, shortly after the enlargement of the Organisation, the Heads of State and Government of member States recognised that the protection of national minorities and combating racism, xenophobia, anti-semitism are essential elements for ensuring stability and democratic security in Europe. The Vienna Summit also underlined that the media can create a feeling of insecurity by sensationalist reporting if the norm of impartiality is breached. Consequently, it was decided

6. With experts from the Czech Republic, Finland, France, Greece, Portugal, Turkey and Ukraine.

7. With experts from Croatia, the Czech Republic, Finland, France, Greece, the Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Turkey and Ukraine.

8. The official title is "Convention for the Protection of Human Rights and Fundamental Freedoms" (ETS No. 5). It was opened for signature by the member States of the Organisation on 4 November 1950 and entered into force on 3 September 1953. It has been ratified by all 47 Council of Europe member States as a precondition for membership of the Organisation. It is not open for signature by non member States. Accession to the Convention by the European Union, comprising 28 of the Council of Europe member States, is currently being examined.

to elaborate a Framework Convention for the Protection of National Minorities⁹ creating the conditions necessary for persons belonging to national minorities to develop their culture, while preserving their religion, traditions and customs. Furthermore, it was decided to pursue a policy for combating racism, xenophobia, anti-semitism and intolerance by creating a European Commission against Racism and Intolerance.¹⁰ Subsequently, in 2005 at the third Council of Europe Summit in Warsaw, the Heads of State and Government of member States reiterated their strong disapproval of all forms of intolerance and discrimination, in particular those based on sex, race and religion, including anti-semitism and islamophobia.

5. Since the Warsaw Summit democratic management of Europe's cultural diversity has been high in the political agenda of the Organisation, with a view to preventing conflicts and ensuring integration and social cohesion. As a result the Council of Europe launched, in 2008, a White Paper on "Living together as equals in dignity" with guidance on policy and good practices in the area of intercultural, including inter-religious, dialogue. In this context "Exchanges on the Religious Dimension of Intercultural Dialogue" take place on an annual basis within the framework of the Committee of Ministers with representatives of religions traditionally present in Europe, representatives of non-religious convictions and other players in civil society.¹¹ The creation of networks of good practices such as Intercultural Cities¹² and the 2008-2010 media campaign against discrimination¹³ was also a continuation of the "White Paper" process. To promote intercultural dialogue the Council of Europe has

9. The Framework Convention for the Protection of National Minorities (ETS No. 157) was adopted by the Committee of Ministers on 10 November 1994, opened for signature by the member States on 1 February 1995 and entered into force on 1 February 1998. Non-member States may also be invited by the Committee of Ministers to become Party to this instrument. On 1 January 2015 it had been ratified by 39 member States: Albania, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Ukraine and the United Kingdom. Belgium, Greece, Iceland and Luxembourg have signed it, but not ratified it. (see below 2.i).

10. The work of the European Commission against Racism and Intolerance (ECRI) covers all Council of Europe member States. See also below 1.ii.

11. These exchanges are founded on the participants' adherence and commitment to the fundamental values of the Council of Europe and their willingness to enter into open and transparent dialogue. For more detail see http://www.coe.int/T/CM/Exchanges-intercultural-dialogue_en.asp

12. The ongoing Intercultural Cities Programme supports cities in reviewing their policies through an intercultural lens and developing comprehensive intercultural strategies to help them manage diversity positively and realise the diversity advantage.

13. The Campaign "Speak out against discrimination" focused on the role of the media in a multicultural Europe. The campaign primarily targeted media industry professionals and was built around the following three main objectives: training media professionals; writing, seeing and hearing diversity in the media; producing and disseminating innovative and inclusive information.

developed a programme of education for democratic citizenship and enhancing intercultural competences based on the rights and responsibilities of citizens, which includes good practice guidance on intercultural education.

6. The Council of Europe has worked on common responses to the development of new information technologies based on the standards and values of the Organisation while ensuring the proper balance between the right to freedom of expression and information and respect for private life. Any intolerance manifested in form of hate speech online or offline is incompatible with the promotion of tolerance and pluralism in democratic societies. For this reason the Council of Europe launched in 2012 a youth campaign to combat hate speech online.¹⁴

7. In 2011, a Group of Eminent Persons, established on the proposal of the Council of Europe Secretary General, published a report on “Living together – combining diversity and freedom in the 21st century Europe”. The report examines a number of factors constituting a risk to the Organisation’s values such as rising intolerance and discrimination, parallel societies, Islamic extremism, loss of democratic freedoms; and a possible clash between freedom of religion and freedom of expression. The guiding principles at the beginning of part two of the report constitute sort of handbook on diversity.

8. In 2014, the Secretary General of the Council of Europe presented a report to the Committee of Ministers which provides an in-depth analysis of the state of democracy, human rights and rule of law in Europe based on the findings of Council of Europe monitoring mechanisms.¹⁵ It refers to serious human rights violations which are on the rise throughout the continent such as, for example, racism, hate speech and discrimination. More particularly, the report draws attention to the fact that religion is increasingly used a pretext for discrimination.¹⁶

14. The Council of Europe’s Youth Campaign “No Hate Speech Movement”, from 2013 to 2015, aimed at awareness raising and training activities for young people and youth organisations to act against hate speech. The campaign also encourages member States to ratify the Additional Protocol to the Budapest Convention on Cyber Crime (see below under 3.C.iii.) which criminalises racial speech online, to update the definition of hate speech so as to better cover all its current forms, in particular as manifested online, and to work towards a better inclusion of internet education within school programmes whether within the framework of education or education on democratic citizenship.

15. Document SG(2014)1 – Final: State of Democracy, Human Rights and Rule of Law in Europe, report by the Secretary General of the Council of Europe, Thorbjørn Jagland, presented at the 124th session of the Committee of Ministers, Vienna, 5-6 May 2014.

16. Part Five of the report on ‘Non-discrimination and Equality’, Chapter F ‘Other forms of discrimination’. Moreover, the introduction to the report mentions issues such as protecting privacy, fighting hate speech on the Internet, the relationship between different freedoms – such as the freedom of expression and freedom of religion – as new problems which need to be tackled.

9. The efficient implementation of the Council of Europe standards at national and local level is essential for guaranteeing the effective respect for human rights and achieving greater unity among its member States. A major building block of systematic work on human rights implementation is human rights education, training and awareness-raising of legal professionals. Increased awareness of the European Convention on Human Rights is thus ensured through training for officials working in the justice system, responsible for law enforcement or responsible for the deprivation of a person's liberty. The Council of Europe has therefore developed specific support programmes for training on human rights standards in its member States.¹⁷

ii. Short presentation of the various relevant Council of Europe bodies and their mandate

10. In order to achieve greater unity in its member States, the Council of Europe has produced a number of legal instruments which contain European standards for the protection and promotion of human rights, democracy and rule of law. These instruments may take the form of binding treaties (e.g. conventions, charters and agreements) or non-legally binding recommendations defining guidelines for the national policies or legislation in member States. The documents are the outcome of the work of various bodies within the Organisation which function in a complementary manner. The legal instruments are elaborated in various intergovernmental committees with representatives from member States and adopted by the **Committee of Ministers**, which is the decision-making body comprising the Foreign Affairs Ministers of member States, or their permanent diplomatic representatives in Strasbourg.

11. The **Parliamentary Assembly of the Council of Europe (PACE)** is the deliberating organ within the Organisation, composed of parliamentarians from the national parliaments of member States. It must be consulted about all international treaties drawn up at the Council of Europe. Though the texts – recommendations, resolutions and opinions – adopted by PACE are not legally binding they serve as a source of inspiration and advice for the Committee of Ministers. These texts have thus often been the initiator of new legal instruments adopted by the Committee of Ministers.¹⁸

17. For example, the European Programme for Human Rights Education for Legal Professionals (HELP Programme).

18. For example, the Assembly's Recommendation 38 on "Human Rights and Fundamental Freedoms" which led the Committee of Ministers to draft the European Convention on Human Rights. See also Recommendation 1134 (1990) on the rights of minorities and Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention (see below 3.C.ii), Resolution 337 (1967) on the right of conscientious objection and Recommendation 1742 (2006) on human rights of members of the armed forces (see further below 3.A.iii. and v.).

12. The **Congress of Local and Regional Authorities of Europe**, acting as a consultative body for the Committee of Ministers, represents local and regional authorities from member States. Its recommendations add a local and regional dimension to the work of the intergovernmental sector by taking into account the needs of elected officials and citizens on the ground.¹⁹

13. To ensure effective implementation of its human rights standards the Council of Europe has worked on developing specific mechanisms to monitor the compliance of member States with their obligations under the most important legal instruments. The oldest and best known mechanism is the **European Court of Human Rights** established under the European Convention on Human Rights²⁰ which ensures respect of the Convention obligations in response to complaints by individuals or member States. Supervision of the execution of the Court's judgments is assured by the Committee of Ministers. Both these elements – the Court's examination of the admissibility²¹ and merits of applications²² and the Committee of Ministers' supervision of the execution of the Court's judgments – ensure a constant improvement of the human rights situation in the member States.²³ In its decisions and judgments the Court (and the former European Commission of Human Rights)²⁴ has interpreted the scope and the content of Article 9 of the Convention on the right to freedom of thought, conscience and religion as well and other linked Convention rights.²⁵ The

19. For example, Resolution 375 (2014) and Recommendation 365 (2014) "Promoting diversity through intercultural education and communication strategies"; Resolution 333 (2011) and Recommendation 315 (2011) on the situation of Roma in Europe: a challenge for local and regional authorities; Resolution 323 (2011) and Recommendation 304 (2011) "Meeting the challenge of interfaith and intercultural tensions at local level"; Resolution 318 (2010) on cultural integration of Muslim women in European cities.

20. See above footnote 8.

21. The Court will first give a decision on the admissibility of an application.

22. Judgments are made by the Court in single-judge formation, in Committees of three judges, in Chambers of seven judges and, in exceptional cases, as Grand Chamber [GC] of seventeen judges.

23. In addition to individual measures taken by the State to erase the consequences of the violations suffered by the applicant the respondent State will often have to take general measures in order to prevent similar violations to occur again. Such measures may be to introduce legislative changes, or to change a judicial or an administrative practice.

24. As a result of the entry into force of Protocol No. 11 improving the effectiveness of the Convention by establishing a single Court, the European Commission of Human Rights was dissolved in 1998.

25. In more recent years the Court has dealt with an increasing number of key cases involving a wide and diverse range of issues such as the wearing of religious symbols and clothing, conscientious objection to military service, the right of parents to education of their children in conformity with their own conscience and belief (see below 3.A.ii., v. and ix.).

case-law reiterates the central importance played by religious and philosophical belief in European societies and stresses the key values of pluralism and tolerance (see below 2.i).

14. This unique international judicial mechanism of the Court is complemented – as far as the social and economic rights guaranteed in the European Social Charter and the revised Charter are concerned – by a monitoring mechanism where decisions on compliance of national policies with the Charter requirements are made by the **European Committee of Social Rights**.²⁶

15. The **Advisory Committee on the Framework Convention on the Protection of National Minorities**²⁷ is mandated to monitor the implementation of the rights of persons belonging to national minorities laid down in that Convention by an independent mechanism on the basis of a State reporting system.²⁸ Although the principle of non-discrimination is the one overarching the whole Framework Convention, other human rights principles are also included such as the right to conscience and religion.²⁹

16. Several other Council of Europe bodies with a non-judicial character deal with various aspects of the principles of freedom of thought, conscience and religion and the links to other Convention rights, in particular freedom of expression. The **European Commission against Racism and Intolerance (ECRI)** is entrusted with the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance in

26. The Committee's "conclusions" are based on yearly reports submitted by the States Parties. The Committee of Ministers may address a recommendation to a State asking it to remedy the situation. In respect of States Parties to the Additional Protocol providing for a system of collective complaints the Committee also examines "collective complaints" lodged by the social partners and other non-governmental organisations. This Additional Protocol (ETS No. 158) was opened for signature by the member States on 9 November 1995 and entered into force on 1 July 1998. On 1 June 2015 it had been ratified by Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal and Sweden. Austria, Denmark, Hungary, Slovakia and Slovenia have signed it but not ratified it. See below 3.A.iv. the Committee's decision and conclusions on the issue of alternative civilian service for conscientious objectors.

27. See above footnote 9.

28. Its findings based on country visits are restricted to advisory opinions to the Committee of Ministers who decides on the compliance of a member State with the obligation laid down in the Framework Convention.

29. See further below 3.C.ii. The Advisory Committee's thematic commentary on education is particular relevant in respect of the right to education of children in conformity with the parents' religious and philosophical convictions (see below 3.A.viii).

the light of the European Convention on Human Rights, its additional protocols and related case-law.³⁰ Religion plays a major role in its activities³¹.

17. The office of the **Commissioner for Human Rights** provides advice and information on the protection of human rights and the prevention of human rights violations.³² The Commissioner's independent status allows him to issue opinions and comments on issues of particular relevance to freedom of thought, conscience and religion.³³

18. The **European Commission for Democracy through Law (Venice Commission)** is the Council of Europe's expert body on constitutional matters.³⁴ Its primary task is to provide States with advice in the form of legal opinions on draft legislation or legislation already in force which is

30. Committee of Ministers Resolution Res (2002)8 on the Statute of the European Commission against Racism and Intolerance. ECRI publishes country-by-country monitoring reports on national situations recommending measures necessary to combat violence, discrimination and prejudice faced by persons or groups of persons, notably on grounds of race, colour, language, religion, nationality or national or ethnic origin. On the basis of its country monitoring work, ECRI has elaborated a series of General Policy Recommendations (GPR) addressed to all member States, which provide guidelines for the development of national policies and strategies in various areas. Of particular relevance in this context are GPR No. 5 on combating intolerance and discrimination against Muslims, GPR No. 6 on combating the dissemination of racist, xenophobic and anti-Semitic material via the Internet, GPR No. 7 on national legislation to combat racism and racial discrimination, GPR No. 9 on the fight against anti-Semitism (see below 3.C.iii.).

31. According to ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, "racism" is understood as "the belief that a ground such as... religion... justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons" (I.1.a) and "racial discrimination" is understood as "any differential treatment based on a ground such as... religion ...which has no objective and reasonable justification" (I.1.b). See also below 3.C.iii.

32. Created by Committee of Ministers Resolution (99) 50 adopted on May 7, 1999 following a decision of the second Council of Europe Summit in 1997 in Strasbourg to promote education and awareness of human rights. The activities of this institution focus on three major, closely-related areas: country visits and dialogue with national authorities and civil society; thematic reporting and advising on the systematic implementation of human rights; and awareness-raising activities.

33. For example on the wearing of religious clothing in the public space, conscientious objection to military service and anti-Muslim prejudice (see below 3.A.ii and v. and 3.C.ii).

34. The Venice Commission was established by an enlarged partial agreement adopted by the Committee of Ministers (Resolution (2002)3 on the Revised Statute of the European Commission for Democracy through Law) which allows it to be open to Council of Europe non-member States as well. It aims at bringing legal and institutional structures into line with European standards in the fields of democracy, human rights and the rule of law and also helps to ensure the dissemination and consolidation of a common constitutional heritage, playing a unique role in conflict management.

submitted to it for examination. Such opinions often concern fundamental rights' constitutional protection in its member States such as freedom of thought, conscience and religion or other related rights in particular freedom of association or freedom of expression.³⁵

35. On the basis of its legal opinions the Venice Commission has produced studies and reports of relevance in this context, for example Guidelines for legislative reviews of law affecting religion or belief and Guidelines on the legal personality of religious or belief communities, prepared jointly with OSCE/ODIHR.

2. GENERAL PRINCIPLES AND DEFINITIONS

i. The right to freedom of thought, conscience and religion as a pillar of democratic society

19. The European Court of Human Rights has underlined that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. In its religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.³⁶ Religious freedom contains both an individual thought, conscience and belief (*forum internum*) and the manifestation of this freedom (*forum externum*). The first aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9, paragraph 1, freedom of religion encompasses a second aspect, namely the freedom to manifest one’s belief, alone and in private but also to practice it in community with others and in public. The manifestation of religious belief may take the form of worship, teaching, practice and observance (see below 3.A.i). Bearing witness in words and deeds is bound up with the existence of religious convictions.³⁷

20. The Court has characterised pluralism, tolerance and openness as the hallmarks of democratic society.³⁸ Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.³⁹ Indeed, the Court has recognised that pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and

36. For example *Kokkinakis v. Greece*, judgment of 25 May 1993, §31; *Metropolitan Church of Bessarabia and Others v. Moldova*, judgment of 13 December 2001, §114; *Buscarini v. San Marino* [GC], judgment of 18 February 1999, §34, *Leyla Şahin v. Turkey* [GC], judgment of 10 November 2005, §104; *S.A.S. v. France* [GC], judgment of 1 July 2014, §124.

37. See *Kokkinakis v. Greece*, cited above, § 31 and also *Leyla Şahin v. Turkey*, cited above, §105.

38. *Handyside v. the United Kingdom*, judgment of 7 December 1976, §49; *Young, James, Webster v. the United Kingdom*, judgment of 13 August 1981, §63.

39. *Valsamis v. Greece*, judgment of 18 December 1996, §27; *Leyla Şahin v. Turkey* [GC], judgment of 10 November 2005, §108; *Folgerø and Others v. Norway*, judgment of 29 June 2007, §84 (f).

cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts and that the harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.⁴⁰ It has explicitly acknowledged that diversity should not be perceived as a threat but as a source of enrichment.⁴¹

21. The Framework Convention on National Minorities also mentions in its preamble that cultural diversity should be seen as a matter of enrichment rather than division. In its preamble it further acknowledges that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.⁴²

22. The Committee of Ministers recalled in its Declaration on Religious Freedom that there can be no democratic society based on mutual understanding and tolerance without respect for freedom of thought, conscience and religion. Its enjoyment is an essential precondition for living together.⁴³ Respecting one another is not only a question of avoiding tensions and conflicts, it is also about protecting freedom of belief and religion – a cornerstone of all human rights standards. This right should be implemented without discrimination against any religion or belief, or indeed against anyone without religious belief.⁴⁴

40. *Gorzelik and Others v. Poland* [GC], judgment of 17 February 2004, §92.

41. *Nachova and Others v. Bulgaria* [GC], judgment of 6 July 2005, §145; *Timishev v. Russia*, judgment of 13 December 2005, §56.

42. *Gorzelik and Others v. Poland*, §93 where the Court referred to the Framework Convention for the Protection of National Minorities.

43. Adopted on 20 January 2011 at the 1103rd meeting of the Ministers' Deputies.

44. Former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, viewpoint on 'Religious Leaders'.

ii. Internal and external aspects of freedom of thought, conscience and religion

23. The right to freedom of thought, conscience and religion in Article 9 contains both an internal freedom (*forum internum*)⁴⁵ and an external freedom (*forum externum*).⁴⁶ Regarding the “internal” aspect contained in the right to hold and to change ones religion or belief, this freedom is absolute and may not be subject to limitations of any kind.⁴⁷ The “external” aspect of the freedom contained in the wording “either alone or in community with others, in public or private, to manifest his religion or belief in worship, observance, practice, and teaching” is, in contrast to the internal freedom, not an absolute right and may be limited, but only under strictly limited circumstances set forth in the applicable limitations contained in paragraph 2 of Article 9 as described below.

iii. Limitations

24. The Court has observed that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on the freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.⁴⁸ Paragraph 2 of Article 9 identifies the circumstances where a State legitimately may restrict the manifestation of the right of freedom of religion or belief on the condition that such limitations are “prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” In its case-law the Court has typically applied the following three criteria when examining complaints of limitations on freedom of thought, conscience and religion.

45. *Van den Dungen v. the Netherlands*, Commission decision of 22 February 1995 (the Convention primarily protects the sphere of personal beliefs and religious creeds).

46. See also below 3.A. at the beginning.

47. *Buscarini v. San Marino*, §§38-39 (legal requirements mandating involuntary disclosure of religious beliefs are impermissible); *Georgian Labour Party v. Georgia*, judgment of 8 July 2008, §120 (an intention to vote for a specific party is essentially a thought confined to the internal forum of a voter and its existence cannot be proved or disproved until and unless it has manifested itself through the act of voting).

48. *Kokkinakis v. Greece*, §33; *Metropolitan Church of Bessarabia and Others v. Moldova*, §115.

- **“prescribed by law”**

25. An interference can be justified if it is “prescribed by law” and “in accordance with the law”. The impugned measures should not only have basis in the domestic law, but it should also refer to the quality of the law in question. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his or her conduct. For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.⁴⁹

- **“legitimate aim”**

26. The interference complained of has to have served a legitimate purpose of protecting public safety,⁵⁰ public order, health, or morals or the rights and freedoms of others⁵¹ as grounds identified in Article 9, paragraph 2.⁵² The Court has reiterated that the enumeration of the exceptions to the individual’s freedom to manifest his or her religion or beliefs, as listed in Article 9, paragraph 2, is exhaustive and that their definition is restrictive.⁵³ For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be

49. *Hasan and Chaush v. Bulgaria* [GC], judgment of 26 October 2000, §84; *Metropolitan Church of Bessarabia and Others v. Moldova*, §115; *Association les Témoins de Jéhovah v. France*, judgment of 30 June 2011, §66; *Perry v. Latvia*, judgment of 8 November 2007, §62; *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §115.

50. For example *S.A.S. v. France*, §115.

51. For example *Leyla Şahin v. Turkey*, §111; *Ahmet Arslan and Others v. Turkey*, §43. *S.A.S. v. France*, §157: “the Court finds [...] the preservation of the conditions of “living together” as an element of the “protection of the rights and freedoms of others”.

52. *Metropolitan Church of Bessarabia and Others v. Moldova*, §113; *Serif v. Greece*, §45; *Kokkinakis v. Greece*, §44.

53. *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §132, *Nolan and K. v. Russia*, judgment of 12 February 2009, §73, *S.A.S. v. France*, §§113, 120: “the Court takes the view that, however essential it may be, respect for human dignity cannot legitimately justify a blanket ban on the wearing of the full-face veil in public places.”

linked to one of those listed in this provision.⁵⁴ The Court's practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention.⁵⁵

- ***“necessary in a democratic society”***

27. It is not enough to justify a limitation on a manifestation of religion by stating that the limitation is ‘in the interests of the public security, health, morality or the protection of rights and freedoms of others’. The limitation must in addition be necessary, in the sense that the particular interest in question is pressing, is proportional in its magnitude to the religious freedom value being limited, and cannot be accomplished in some less burdensome manner. The necessity constraint is very often the most significant factor in assessing whether particular limitations are permissible. In this sense, international standards impose more rigorous ‘limitations on the limitations’ of manifestations of religion, and thus provide protection for a broader range of religious activities.⁵⁶

28. In examining whether limitations to the rights and freedoms guaranteed by the Convention can be considered “necessary in a democratic society”, the Court has however consistently held that the Contracting States enjoy a certain but not unlimited margin of appreciation (see below 2.vi). It is, in any event, for the Court to give a final ruling on the limitation's compatibility with the Convention and it will do so by assessing in the circumstances of a particular case, *inter alia*, whether the interference corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued”.⁵⁷ In this connection the Court has noted that the adjective “necessary” does not have the flexibility of such expressions as “useful” or “desirable”.⁵⁸

54. *S.A.S. v. France*, §113.

55. See, for example, *Leyla Şahin v. Turkey*, §99; *Ahmet Arslan and Others v. Turkey*, §43; *S.A.S. v. France*, §114.

56. CDL-AD(2010)054, Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §35.

57. *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §53.

58. *Handyside v. the United Kingdom*, §48; *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §116.

29. In order to determine the scope of the State's margin of appreciation, the Court must take into account what may be at stake, for instance the need to maintain true religious pluralism, which is inherent in the concept of a democratic society.⁵⁹ Such values may, for example, determine conclusions that State authorities may properly deem it necessary to protect the religious beliefs of adherents against abusive attacks through expression⁶⁰ (see also below under 2.v.). In exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole.⁶¹

iv. Positive obligations

30. Under Article 1 of the European Convention on Human Rights, the Contracting States undertake to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention and its protocols. In consequence, a State is first under a negative obligation to refrain from interfering with the protected rights. This negative obligation is reflected, for example, in the language used in the second paragraph of Article 9 which provides that "[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as ...". The overarching obligation to secure rights is, however, not confined to a requirement that States refrain from interfering with protected rights: it can also place the State under an obligation to take active steps. The guarantees found in the Convention have to be practical and effective rights. Hence, jurisprudence contains the idea of "positive obligations", that is, responsibilities upon the State to take certain action with a view to protecting the rights of individuals.⁶²

59. See *Kokkinakis v. Greece*, §31.

60. *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §55.

61. *Kokkinakis v. Greece*, §47; *Metropolitan Church of Bessarabia and Others v. Moldova*, §119.

62. *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, judgment of 3 May 2007, §§96-97, 125; *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §§84, 91, 95, 108.

31. The fundamental principle driving the case-law on positive obligations is the duty on the part of state authorities to ensure that freedom of religion and belief exists within a spirit of pluralism and mutual tolerance.⁶³ (see also above 2.i). It is not always obvious whether a positive obligation to protect thought, conscience or religion exists. In deciding more generally whether or not a positive obligation arises, the Court will seek to “have regard to the fair balance that has to be struck between the general interest of the community and the competing private interests of the individual, or individuals, concerned”.⁶⁴

v. Need for balancing between rights

32. Freedom of thought, conscience and religion as guaranteed in Article 9 is closely linked to other Convention rights, in particular freedom of expression (Article 10)⁶⁵ and freedom of assembly and association (Article 11)⁶⁶ but also others such as the right to privacy (Article 8).⁶⁷ The Convention protects all these rights equally but not without certain limitations based on the conditions set out in the second paragraph of these articles (see above 2.iii). Although these rights are complementary, they may at times involve conflicting interests as a result of them being exercised. In such situations the State will need to weight the competing rights against one another in order to be able to strike a fair balance between them.⁶⁸ The proper balancing of these rights in accordance with the principle of proportionality is subject to the Court’s supervision. How the Court approaches the interpretation of Article 9 and related guarantees will depend to a large extent upon the particular issue in question (see also below 2.vi).

63. For example, *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16 December 2004, §80 (States have such a duty and discharging it may require engaging in mediation); *Cha’are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §80 (It may also be expected that domestic arrangements permit religious adherents to practise their faith in accordance with dietary requirements, although the obligation may be limited to ensuring there is reasonable access to the foodstuff, rather than access to facilities for the ritual preparation of meat); *97 members of the Gldani Congregation of Jehovah’s Witnesses and 4 Others v. Georgia*, judgment of 3 May 2007, §§141-142 (State authorities must respond appropriately to protect adherents of religious faiths from religiously-motivated attacks, and when such attacks have occurred, to do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a religiously induced violence), see below 3.C.i.

64. *Dubowska and Skup v. Poland*, Commission decision of 18 April 1997.

65. *Arrowsmith v. the United Kingdom*, Commission decision of 12 October 1978, §§60-62.

66. *Hasan and Chaush v Bulgaria* [GC], judgment of 26 October 2000, §62.

67. *Schüth v. Germany*, judgment of 23 September 2010, §57 and *Obst v. Germany*, judgment of 23 September 2010.

68. Committee of Ministers Declaration on human rights in culturally diverse societies, adopted on 1 July 2009 at the 1062nd meeting of the Ministers’ Deputies

33. In the case of attacks on religious beliefs the conflicting interests at stake will typically be, on the one hand, the applicant's right to communicate his or her ideas on religious beliefs to the public, and, on the other hand, the right of other persons to respect of their right to freedom of thought, conscience and religion.⁶⁹ Here the issue may be the extent to which State authorities may take action against expression in order to protect the religious sensibilities of adherents of particular faiths by preventing or punishing the display of insulting or offensive material that could discourage adherents from practising or professing their faith through ridicule.⁷⁰ The scope of Article 10's guarantee for freedom of expression encompasses, after all, ideas which "offend, shock or disturb", and in any case the maintenance of pluralist society also requires that adherents of a faith at the same time accept that their beliefs may be subject to criticism and to the propagation of ideas that directly challenge these beliefs.⁷¹ On the other hand, those who exercise the freedom of expression under Article 10 also undertake duties and responsibilities, among them an obligation to ensure the peaceful enjoyment of the rights of other persons, e.g. those guaranteed under Article 9.⁷²

69. *Otto-Preminger-Institut v. Austria*, §§55-56: "The issue before the Court involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely the right of the applicant association to impart to the public controversial views and, by implication, the right of interested persons to take cognisance of such views, on the one hand, and the right of other persons to proper respect for their freedom of thought, conscience and religion, on the other hand".

70. *Otto-Preminger-Institut v. Austria*, §§55-56: "The respect for the religious feelings of believers as guaranteed in Article 9 can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration; and such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society. The Convention is to be read as a whole and therefore the interpretation and application of Article 10 (art. 10) in the present case must be in harmony with the logic of the Convention"; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §60.

71. *Otto-Preminger-Institut v. Austria*, §47; *Klein v. Slovakia*, judgment of 31 October 2006, §47: "While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane".

72. *Otto-Preminger-Institut v. Austria*, §§47, 55-56; *Klein v. Slovakia*, judgment of 31 October 2006, §47: "While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane".

34. There is also a risk of conflict between freedom of expression and the prohibition of all forms of discrimination. In cases where exercising the freedom of expression is used to incite hatred against a religious group and shows the characteristics of “hate speech” in that offensive speech is intended or likely to stir up ill-will against a group in society it is unlikely to attract any protection, particularly in light of Article 17 of the Convention prohibiting the abuse of rights⁷³ (see below 3.C.iii).

35. Indeed, many applications alleging a violation of an individual’s right to participate in the life of a democratic society guaranteed by the freedoms of expression and of assembly and association in terms of Articles 10⁷⁴ and 11⁷⁵ may also contain a reference to Article 9, although the Court has in many instances been able to conclude that the issues raised by an application can be better resolved by reference to one or other of these other two guarantees.

vi. Margin of appreciation (bearing in mind the diversity of approaches taken by national authorities in this area)

36. The Court has established in its case-law that the authorities have a certain scope for discretion, i.e. a margin of appreciation, in determining the most appropriate measures to take in order to reach the legitimate aim sought. By reason of their direct and continuous contact with the vital forces of their countries, national authorities are often better placed than an international court to assess matters falling under the articles concerned.⁷⁶

73. *Pavel Ivanov v. Russia*, decision of 20 February 2007; *Lehideux and Isorni*, judgment of 23 September 1998, §§53, 47. See also *Garaudy v. France*; decision of 24 June 2003; *Féret v. Belgium*, judgment of 16 July 2009, §69.

74. For example, *Murphy v. Ireland*, §§37, 72, 82 (For the Court, the refusal primarily concerned the regulation of the applicant’s means of expression and not his manifestation of religious belief, and thus the case was disposed of in terms of Article 10. State authorities were better placed than an international court to decide when action may be necessary to regulate freedom of expression in relation to matters liable to offend intimate personal convictions. This “margin of appreciation” was particularly appropriate in respect to restrictions on free speech in respect to religion.)

75. For example, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], judgment of 13 February 2003, §137.

76. *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §58.

This doctrine allows States to enact laws and implement policies that may differ from each other with regard to different histories and cultures.⁷⁷ Protocol No. 15 amending the Convention⁷⁸ introduces a reference to the principle of subsidiarity and the doctrine of the margin of appreciation.⁷⁹

37. Moreover, the Court has reiterated that the margin of appreciation afforded to the State is wider where there is no consensus within the member States, either as to the relative importance of the interest at stake or as to the best means of protecting it.⁸⁰ The Court may also, if appropriate, have regard to any consensus and common values emerging from the practices of the States parties to the Convention.⁸¹ There will usually be a wide margin if the State is required to strike a balance between competing private and public interests or different Convention rights⁸² (see also above under 2.v). While this margin of appreciation should be respected it should not be seen as unlimited and preventing the Court from any critical

77. *Murphy v. Ireland*, judgment of 10 July 2003, §§73, 82.

78. Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No. 213) was adopted by the Committee of Ministers on 16 May 2013 and opened for signature by the member States on 24 June 2013. It will enter into force upon ratification by all the Contracting States of the European Convention on Human Rights. On 1 January 2015 the Protocol had been ratified by 10 member States: Azerbaijan, Estonia, Ireland, Liechtenstein, Moldova, Monaco, Montenegro, Norway, San Marino and the Slovak Republic. Albania, Andorra, Armenia, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Iceland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and the United Kingdom have signed it, but not ratified it. The Protocol was prepared as a result of the Brighton Declaration adopted at the High-level Conference on the Future of the European Court of Human Rights, organised by the United Kingdom Chairmanship of the Committee of Ministers at Brighton, United Kingdom, on 19-20 April 2012. This event was a follow up to two previous High-level Conferences on the future of the Court, the first organised by the Swiss Chairmanship of the Committee of Ministers at Interlaken, Switzerland, on 18-19 February 2010 and the second organised by the Turkish Chairmanship of the Committee of Ministers at Izmir on 26-27 April 2011.

79. Article 1 of Protocol No. 15 states: *At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows: "Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention"*. See also the Explanatory Report to the Protocol, §9.

80. In the Court's jurisprudence, three factors are relevant in order to determine the existence of a European consensus: international treaty law, comparative law and international soft law, see *Marckx v. Belgium*, judgment of 13 June 1979, §41.

81. *S.A.S. v. France*, §129. See, for example, *Bayatyan v. Armenia* [GC], judgment of 7 July 2011, §122.

82. *Schüth v. Germany*, judgment of 23 September 2010, §56.

assessment of the proportionality of the measures concerned. The domestic margin of appreciation thus goes hand in hand with a European supervision.⁸³

38. As regards Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals⁸⁴ and in deciding to what extent a limitation of the right to manifest one's religion or beliefs is "necessary". That being said, in delimiting the extent of the margin of appreciation in a given case, the Court must also have regard to what is at stake therein.⁸⁵ The Court has in particular held that where questions concerning the relationship between State and religions are at stake⁸⁶, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance.⁸⁷ It is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and the meaning or impact of the public expression of a religious belief will differ according to time and context. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the specific domestic context.⁸⁸ Likewise, according to the Court's case-law, the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State. The Court takes into account the fact that Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development. It

83. See, for example, *Manoussakis and Others*, cited above, §44, and *Leyla Şahin*, cited above, §110.

84. *Lautsi and Others v. Italy* [GC], judgment of 18 March 2011, §61.

85. See for example *Manoussakis and Others*, cited above, §44, and *Leyla Şahin*, cited above, §110.

86. *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §84; *Wingrove v. the United Kingdom*, §58.

87. This will be the case, for instance, when it comes to regulating the wearing of or displaying religious symbols in educational institutions (*Leyla Şahin v. Turkey* [GC], judgment of 10 November 2005, §109) or to organisation of the school environment and to the setting and planning of the curriculum (*Lautsi and Others v. Italy*, §§68-69), especially in view of the diversity of the approaches taken by national authorities on the issue.

88. *Otto-Preminger-Institut v. Austria*, §50.

emphasises, however, that the reference to a tradition cannot relieve a Contracting State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols.⁸⁹

39. The margin of appreciation is also particularly appropriate in respect to restrictions on free speech in respect to religion since what is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever growing array of faiths and denominations. The Court has held that a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion. Moreover, as in the field of morals, and perhaps to an even greater degree, there is no uniform European conception of “the requirements of the protection of the rights of others” in relation to attacks on their religious convictions.⁹⁰

vii. Duty of neutrality and impartiality of the State

40. In exercising its regulatory power in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.⁹¹ Among other things this obligation includes an obligation to refrain from taking sides in religious disputes. When faced with religious conflicts, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.⁹² In any event, some degree of tension is only the unavoidable consequence of pluralism.⁹³

41. In legislation dealing with the structuring of religious communities, the neutrality requirement excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.⁹⁴ Accordingly, state measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single

89. *Lautsi and Others v. Italy*, §68.

90. *Wingrove v. the United Kingdom*, §58.

91. *Metropolitan Church of Bessarabia v. Moldova*, §§116-117; *Supreme Holy Council of the Muslim Community v. Bulgaria*, §§93-99; *Serif v. Greece*, §§49-54; *Agga v. Greece (No. 2)*, §§56-61.

92. *Serif v. Greece*, judgment of 14 December 1999, §53.

93. *Agga v. Greece (no. 2)*, judgment 17 October 2002, §§56-61.

94. CDL-PI(2014)005 Compilation of the Venice Commission opinions and reports concerning freedom of religion and belief (revised July 2014), p. 15.

leadership, constitute an infringement of the freedom of religion.⁹⁵ It is immaterial to the determination of whether an “interference” has occurred with the rights of adherents who are dissatisfied with the outcome of state intervention that they are at liberty to establish a new religious organisation.⁹⁶

viii. Non-discrimination on grounds of thought, conscience and religion

42. States are obliged to respect and ensure to all individuals subject to their jurisdiction the right to freedom of thought, conscience and religion without discrimination. The protection in Article 9 of the Convention is reinforced by the prohibition of discrimination in Article 14 and Article 1 of Protocol No. 12.⁹⁷ These two provisions make explicit reference to “religion, political or other opinion” as examples of prohibited grounds for discriminatory treatment. The meaning of “discrimination” in Article 1 of Protocol No. 12 is intended to be identical to that in Article 14 of the Convention.⁹⁸

43. The notion of discrimination has been interpreted consistently in the Court’s case-law which makes it clear that “discrimination” means treating differently without an objective and reasonable justification, persons in similar situations.⁹⁹ States enjoy however a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.¹⁰⁰ The Court has also found discriminatory a failure to treat differently persons in significantly different situations.¹⁰¹ Thus, the Court must not neglect the specific features of different religions where these are of particular significance in resolving the dispute brought before the Court.¹⁰²

95. *Supreme Holy Council of the Muslim Community v. Bulgaria*, §§73, 93-99

96. *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §§122-160.

97. The prohibition of discrimination found in Article 14 is limited in its scope as it applies only to “the rights and freedoms set forth” in the Convention which means that the provision can only be invoked in conjunction with one or more of the substantive guarantees contained in the Convention or in one of the protocols. However Protocol No. 12 of the Convention is wider in that it extends the scope of protection to “any right set forth by law” and thus introduces a general prohibition of discrimination.

98. *Sejdić and Finci v. Bosnia and Herzegovina* [GC], judgment of 22 December 2009, §55.

99. *Ibid.*

100. *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, §96.

101. *Thlimmenos v. Greece* [GC], judgment of 6 April 2000, §44.

102. *Cha'are Shalom Ve Tsedek v. France*.

44. A general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group and there is no discriminatory intent.¹⁰³ This is only the case, however, if such policy or measure has no “objective and reasonable” justification, that is, if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality” between the means employed and the aim sought to be realised.¹⁰⁴

45. If a State goes beyond its core obligations under Article 9 and creates additional rights falling within the wider ambit of freedom of religion or conscience, such rights are then protected by Article 14 in conjunction with Article 9 against discriminatory application of domestic law.¹⁰⁵ For example, any distinction acknowledging historical differences in the role that different religions have played in a particular country’s history are permissible so long as they are not used as a justification for ongoing discrimination.¹⁰⁶

103. See for example *D.H. and Others v. the Czech Republic* [GC], §§ 175, 184-185; *S.A.S. v. France*, §161.

104. *D.H. and Others v. the Czech Republic*, §196; *S.A.S. v. France*, §161.

105. *Alujer Fernandez and Caballero Garcia v. Spain*, inadmissibility decision of 14 June 2001 (The Court observed that freedom of religion does not entail Churches or their members being given a different tax status to that of other taxpayers. However, where such agreements or arrangements do exist, these do not, in principle, contravene the requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other Churches wishing to do so).

106. *Savez Crkava “Riječ Žlvota” and Others v. Croatia*, §§56-58, 85-93.

3. THEMATIC ISSUES

A. Individual right to freedom of thought, conscience and religion

46. The starting point is Article 9 of the European Convention on Human Rights which confers protection for an individual's core belief system:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

47. The freedom proclaimed by Article 9, paragraph 1, is understood as the right of every person to freely form and hold his or her own thoughts and convictions, inspired by some ethical or religious system of values. Within the limit of the so-called "*forum internum*" those freedoms are of absolute character and cannot be subject to limitations. At the same time, Article 9, paragraph 1, guarantees the freedom to manifest one's religion or belief which entails some form of interaction with other persons or institutions of the society. The actions within the framework of the so-called "*forum externum*" may be undertaken both by individuals or collective entities, especially churches and religious organisations.¹⁰⁷ In this sphere limitations are admissible in accordance with the second paragraph of the article.

48. Article 9 entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion.¹⁰⁸ It refers also to the freedom to change one's religion or belief. It further entails the freedom to manifest one's religion but also the freedom not to manifest it.

107. See below 3.B.

108. See, for example, *Kokkinakis v. Greece*, 25 May 1993, §31; *Buscarini and Others v. San Marino* [GC], §34; *Leyla Şahin v. Turkey*, §104; *S.A.S. v. France*, judgment of 1 July 2014, §124.

49. Apart from Article 9, issues concerning conscience and belief may also arise elsewhere in the Convention. As already mentioned above, Article 9 is closely related to Article 8's guarantee of the right to respect for private life,¹⁰⁹ Article 10's guarantee of freedom of expression and to the right of association under Article 11.¹¹⁰ Also additional provisions provide support, such as Article 2 of Protocol No. 1, which requires that parents' philosophical and religious beliefs are accorded respect in the provision of education to their children.¹¹¹ In addition, under Article 14 enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as, inter alia, religion.¹¹²

i. Freedom to manifest one's thought, conscience and religion

50. The general scope of manifestation of religious beliefs was clarified by the Court in its cornerstone judgment in the case of *Kokkinakis v. Greece*¹¹³ relating to Article 9:

31. [...] While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter.

[...]

109. *S.A.S. v. France*, §106: "The ban on wearing clothing designed to conceal the face, in public places, raises questions in terms of the right to respect for private life (Article 8 of the Convention) of women who wish to wear the full-face veil for reasons related to their beliefs, and in terms of their freedom to manifest those beliefs (Article 9 of the Convention)".

110. Cf. *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, §57: "the protection of personal opinion afforded by Articles 9 and 10 in the shape of freedom of thought, conscience and religion and of freedom of expression is also one of the purposes of freedom of association as guaranteed by Article 11".

111. See below 3.A.ix.

112. See also below 3.C.ii.

113. Judgment of 25 May 1993. See also *Metropolitan Church of Bessarabia and Others*, judgment of 13 December 2001, §114.

51. In the said case¹¹⁴ the Court further clarified that in promoting pluralism within the framework of the Convention's Article 9 not only protects religious belief but also non-belief as well as non-religious belief:

31. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

General scope

52. The scope of Article 9 is potentially wide and the right to manifest one's religion extends not only to freedom in the private sphere and individual manifestations but also to manifestations in community and in public. It has an individual dimension as well as a collective one. It is vested both with natural persons (including minors)¹¹⁵ but also collective entities (legal persons, associations, including churches).¹¹⁶ The manifestation of religion and belief may take various forms including worship, teaching, practice and observance. The term "practice" as employed in paragraph 1 does not however cover as a "manifestation" of the belief each act which is in some way inspired, motivated or influenced by it. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9, paragraph 1. In order to count as a "manifestation" within the meaning of Article 9, an act must be intimately linked to the religion or belief, such as an act of worship, devotion, teaching or observance, which forms part of the practice of a religion or belief in a generally recognised form.¹¹⁷ On the contrary, when the actions of individuals do not actually express the belief concerned they cannot be considered to be as such protected by Article 9, paragraph 1, even when they are motivated or influenced by it.¹¹⁸

114. See also *Buscarini and Others v. San Marino* [GC], judgment of 18 February 1999, §34.

115. See below 3.A.x.

116. See below 3.B.

117. *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §82.

118. *Arrowsmith v. the United Kingdom*, Commission decision of 12 October 1978, §71.

53. The scope of Article 9 cannot be stretched so far as, for example, allowing general laws to be broken.¹¹⁹ However, the question of compatibility of general laws with Article 9 of the Convention can also be put into question by the Court. Moreover Article 9 does not include, for example, matters such as the non-availability of divorce.¹²⁰ A refusal to hand over a letter of repudiation to a former spouse in terms of Jewish law also does not involve a manifestation of belief,¹²¹ nor will the choice of forenames for children.¹²²

54. Similarly, in some instances it may be necessary to consider whether it would be more appropriate to consider an issue under another provision of the Convention. For instance, certain manifestations of views and convictions can be qualified by the Court as not falling under Article 9 but rather under Article 10 of the Convention. For instance, the Court considered that the distribution of anti-abortion material outside a clinic did not involve expression of religious or philosophical beliefs as this involved essentially persuading women not to have an abortion.¹²³ Interferences with the right to disseminate materials of the kind in question may instead give rise to issues falling under Article 10's guarantee of freedom of expression. The deprivation of a religious organisation's material resources, for example, has been held not to fall within the scope of Article 9, but rather to give rise to issues under the protection of property in terms of Article 1 of Protocol No. 1.¹²⁴ Similarly, refusal to grant an individual an exemption from the payment of a church tax on the ground

119. *Pichon and Sajous v. France*, decision of 2 October 2001. The Court considered that, as long as the sale of contraceptives was legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants could not give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products.

120. *Johnston and Others v. Ireland*, judgment of 18 December 1986, §§62-63. For the Court it was clear that the applicant's freedom to have and manifest his convictions was not in issue; his complaint derived, in essence, from the non-availability of divorce under Irish law, a matter to which, in the Court's view, Article 9 could not, in its ordinary meaning, be taken to extend.

121. *D. v. France*, decision of 6 December 1983. The Commission noted that the applicant did not allege that in handing over a letter of repudiation he would be obliged to act against his conscience, since it is an act by which divorce is regularly established under Jewish law; the Commission, therefore, considered that in refusing to hand over such letter to his ex-wife, the applicant was not manifesting his religion in observance or practice, within the meaning of Article 9, para 1 of the Convention.

122. *Salonen v. Finland*, decision of 2 July 1997. The Commission noted that although the desired name had certainly a strong personal motivation, it did not find that it was a manifestation of any belief in the sense that some coherent view on fundamental problems could be seen as being expressed thereby.

123. *Van den Dungen v. the Netherlands*, decision of 22 February 1995. See also *Knudsen v. Norway*, decision of 8 March 1985.

124. *Holy Monasteries v. Greece*, judgment of 9 December 1994.

of non-registration may be considered in terms of the right to property taken in conjunction with the prohibition on discrimination in the enjoyment of Convention guarantees rather than as a matter of conscience or religion.¹²⁵ A claim that the refusal to recognise marriage with an underage girl as permitted by Islamic law involved an interference with manifestation of belief was deemed not to fall within the scope of Article 9 but rather of Article 12.¹²⁶

55. In any event, the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement to establish that a person acted in fulfilment of a duty mandated by the religion or belief in question.¹²⁷

Limitations

56. Since the manifestation by a person of his or her religion or belief may have an impact on others, the drafters of the Convention qualified this aspect of the freedom in the manner set out in Article 9, paragraph 2¹²⁸.

57. However, the fundamental nature of the rights guaranteed in Article 9, paragraph 1, is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11, which cover all the rights mentioned in the first paragraphs of those articles, that of Article 9 refers only to “freedom to manifest one’s religion or belief”. In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.¹²⁹ In contrast, the right to hold or not to hold a belief and to change religion as a matter of conscience is an absolute right¹³⁰ not covered by the limitations laid down in Article 9, paragraph 2.

125. *Darby v. Sweden*, judgment of 23 October 1990, §§30-34.

126. *Khan v. the United Kingdom*, decision of 7 July 1986.

127. *Eweida and Others v. the United Kingdom*, §82.

128. Compare *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.

129. See *Kokkinakis v. Greece*, judgment of 25 May 1993, §33,

130. PACE Resolution 1846 (2011) on combating all forms of discrimination based on religion. Compare also *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.

58. The second paragraph of Article 9 provides that any limitation placed on a person's freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein.¹³¹

59. The case-law under Article 9 of the Convention also indicates that, if a person is able to take steps to circumvent a limitation placed on his or her freedom to manifest religion or belief, there is no interference with the right under paragraph 1 and the limitation therefore is not required to be justified under paragraph 2.¹³² In the case of *Cha'are Shalom Ve Tsedek v. France*, concerning the failure to accord a religious community an authorisation to perform the slaughter of animals for consumption in accordance with its specific religious prescriptions, the Court held that there would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable. But since this was not the case, the refusal of the authorisation did not constitute an interference with the applicant association's right to the freedom to manifest its religion.¹³³

60. Finally, one should stress that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9, paragraph 2, is exhaustive and that their definition is restrictive.¹³⁴ For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision.¹³⁵

61. In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to uphold the fundamental right to freedom of expression by ensuring national legislation does not unduly limit religiously motivated speech.¹³⁶

131. Compare *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.

132. *Ibid.*, §83

133. *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §§80-83 (Meat prepared in a manner consistent with the applicant association's beliefs was available from other suppliers in a neighbouring country).

134. See, for example, *S.A.S. v. France*, judgment of 1 July 2014, §113; *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §132; *Nolan and K. v. Russia*, judgment of 12 February 2009, §73.

135. See among others, *S.A.S. v. France*, judgment of 1 July 2014, §113.

136. PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §6.4.

ii. Wearing of religious symbols and clothing (dress codes)

62. The wearing of religious symbols or clothing constitutes one of the forms of manifesting one's religious beliefs under Article 9. In *Eweida and Others*¹³⁷ the Court characterised such a manifestation as a fundamental right because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others.¹³⁸

63. In the said case the Court found a violation of Article 9 in respect of the first applicant considering that a fair balance between the applicant's desire to manifest her religion by wearing a cross and the interest of the private employer had not been struck. It also noted that there was no evidence that the wearing of other, previously authorised, religious symbols had had any negative impact on the image of the airline company in question.¹³⁹

64. Restrictions on the wearing of items of clothing or other conspicuous signs of religious belief will therefore normally constitute an interference with the right to manifest religious beliefs. The compatibility with Article 9 of such restrictions will depend on the reasons advanced for the restrictions and also on the proportionality of the interference and whether a fair balance has been struck. As also stressed by the Court in the *Eweida* judgment, the importance for the second applicant of being permitted to manifest her religion by wearing her cross visibly must weigh heavily in the balance.¹⁴⁰

137. *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013.

138. *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §94.

139. *Ibid.* More about this judgment in the context of the positive obligations of the State *vis-à-vis* private employer-employee relations – see also below 3.A.iii.

140. See *Eweida and Others v. the United Kingdom*, §99.

65. In this area, the Court however recognises a certain margin of appreciation on the part of state authorities, particularly where the justification advanced by the State is public or other persons' safety¹⁴¹ or the perceived need to prevent certain fundamentalist religious movements from exerting pressure on others belonging to another religion or who do not practise their religion.¹⁴²

66. Yet, the grounds for limitation have to be assessed carefully in each case taking into account its particular circumstances. In the case of *Ahmet Arslan and Others v. Turkey*¹⁴³ the Court found a violation of Article 9 holding, in particular, that there was no evidence that the applicants had represented a threat to the public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. The Court emphasised that in contrast to other cases, the case concerned punishment for the wearing of particular dress in public areas that were open to all, and not regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.¹⁴⁴

141. For example *Phull v. France*, decision of 11 January 2005 and *El Morsli v. France*, decision of 4 March 2008 (obligation to remove clothing with a religious connotation in the context of a security check); *Mann Singh v. France*, decision of 11 June 2007 (requirement to appear bareheaded on identity photos for use on official documents). The Court did not find a violation of Article 9 in any of the aforementioned cases. See also below the Court's non-violation conclusion in respect of the second applicant in the case of *Eweida and Others v. the United Kingdom*, §99: "The hospital managers were better placed to make decisions about clinical safety than a court, particularly an international court which has heard no direct evidence."

142. *Karaduman v. Turkey*, decision of 3 May 1993 (requirement that an official photo could not show a graduate wearing an Islamic headscarf, but only bare-headed); *Köse and 93 Others v. Turkey*, decision of 24 January 2006 (prohibition on wearing headscarf within limits of religiously oriented school, a general measure imposed upon all students irrespective of belief: inadmissible); *Kurtulmuş v. Turkey*, decision of 24 January 2006 (university professor refused authorisation to wear a headscarf); *Dogru v. France*, judgment of 4 December 2008, §§47-78 (exclusion of female pupils from state schools for refusing to remove religious attire during physical education and sports lessons: no violation); similarly *Kervanci v. France*, judgment of 4 December 2008, §§46-78.

143. *Ahmet Arslan and Others v. Turkey*, judgment of 23 February 2010. The applicants, members of a religious group known as *Aczimendi tarikatı*, complained of their conviction for manifesting their religion through their clothing after having toured the streets and appeared at a court hearing wearing the distinctive dress of their group (consisted of a turban, baggy trousers and a tunic, all in black, together with a stick).

144. *Ibid.* §§50-52.

67. In the case of *S.A.S. v. France*,¹⁴⁵ which concerned the ban on veil of the face, the Court took into account the State's margin of appreciation afforded in the context of the relationship between State and religions in a given society. The Court held that France had a wide margin of appreciation in the present case, in particular as there was little common ground amongst the member States of the Council of Europe as to the question of the wearing of the full-face veil in public. The Court thus observed that there was no European consensus against a ban. Consequently, the impugned ban could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others". Accordingly, there had been no violation either of Article 8 or of Article 9 of the Convention. Differences in the rules applied by the States may thus be regarded as coming within the scope of the margin of appreciation.

68. The Court has also examined a number of cases on the wearing religious symbols in schools and other educational institutions – both by pupils and students¹⁴⁶ as well as by teachers.¹⁴⁷ In *Leyla Şahin v.*

145. Judgment [GC] of 1 July 2014.

146. See, for example, *Kervanci v. France*, judgment of 4 December 2008; *Aktas v. France*, decision of 30 June 2009; *Ranjit Singh v. France*, decision of 30 June 2009. These cases concerned the expulsion of pupils from schooling for their refusal to remove various religious symbols (Muslim headscarves and the Sikh keski or under-turban) during lessons. The Court considered that the interference with the right to manifest their beliefs could be considered proportionate to legitimate aims of protecting the rights and freedoms of others and of protecting public order. The expulsions had not been on account of any objection to religious convictions as such and the ban had in any event sought to protect the constitutional principle of secularity.

147. See for example *Dahlab v. Switzerland*, decision 15 February 2001. The Court considered the prohibition from wearing a headscarf while teaching in a primary school to be justified in principle and proportionate to the stated aim of protecting the rights and freedoms of others, public order and public safety, having regard in particular to the fact that the children for whom the applicant was responsible as a representative of the State were aged between four and eight, an age at which children were more easily influenced than older pupils. The same conclusion was reached in *Kurtulmuş v. Turkey*, decision of 24 January 2006 concerning the prohibition for a university professor to wear the Islamic head-scarf in the exercise of her functions. The Court considered that the State was entitled to restrict the wearing of Islamic headscarves by civil servants if the practice clashed with the aim of protecting the rights and freedoms of others, that the applicant had chosen to become a civil servant and that the dress code in question, which applied without distinction to all members of the civil service, was aimed at upholding the principles of secularism and neutrality of the civil service, and in particular of state education. Differences in the rules applied by the States may thus be regarded as coming within the scope of the margin of appreciation.

Turkey,¹⁴⁸ the Grand Chamber reiterated the wide margin of appreciation which it affords to States on this matter:

109. Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance [...]. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially [...] in view of the diversity of the approaches taken by national authorities on the issue. It is not possible to discern throughout Europe a uniform conception of the significance of religion in society [...], and the meaning or impact of the public expression of a religious belief will differ according to time and context [...]. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order [...]. Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the specific domestic context [...].

69. In connection with the debate in many European countries on the prohibition of religious clothing, such as the *burqa* and the *niqab*, the Commissioner for Human Rights referred in 2011 to a general ban on such attire as constituting an ill-advised invasion of individual privacy.¹⁴⁹ In general he advised States:

[...] to avoid legislating on dress, other than in the narrow circumstances set forth in the Convention although he considered it legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some

148. Judgment [GC] of 10 November 2005. The applicant, who was a student complained that a prohibition on her wearing the Islamic headscarf at university and the consequential refusal to allow her access to classes had violated her rights under Article 9 and Article 2 of Protocol No. 1. In this case, the Court recognised that there had been an interference with the right of the applicant to manifest her religion, that the interference primarily had pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order, and that it had been “prescribed by law”. As to whether the interference had been “necessary in a democratic society”, the Grand Chamber ruled that the interference in issue had been both justified in principle and proportionate to the aims pursued, taking into account arguments based on the principles of secularism and equality and the protection of the rights of women at the heart both of the Turkish constitutional system and of the Convention, §§115-116. The Court also found that the argument could be applied by analogy with respect to the alleged violation of the right to education in terms of Article 2 of Protocol No. 1, and that the headscarf ban had not interfered with the right to education of the applicant, §162. See also *Köse and Others v. Turkey*, decision of 24 January 2006.

149. Viewpoint on “Burqa and privacy” published on 20 July 2011, see *Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights*, pp. 39-43.

instances, this may require complete neutrality as between different political and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents.”

[...]

The political challenge for Europe is to promote diversity and respect for the beliefs of others whilst at the same time protecting freedom of speech and expression. If the wearing of a full-face veil is understood as an expression of a certain opinion, we are in fact talking here about the possible conflict between similar or identical rights – though seen from two entirely different angles.

70. In its Resolution 1743 (2010) “Islam, Islamism and Islamophobia in Europe”,¹⁵⁰ the Parliamentary Assembly referred to the ban of full veiling or other religious or special clothing:

16. [...] Article 9 of the Convention includes the right of individuals to choose freely to wear or not to wear religious clothing in private or in public. Legal restrictions to this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen. However, a general prohibition of wearing the *burqa* and the *niqab* would deny women who freely desire to do so their right to cover their face.

Furthermore, the Parliamentary Assembly asked the Committee of Ministers to:¹⁵¹

3.13. call on member states not to establish a general ban of full veiling or other religious or special clothing, [...] legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen.

iii. Manifestation of religion and belief in various settings

71. In general the Court has shown reluctance to recognise any positive obligation on the part of employers to take steps to facilitate the manifestation of belief, for example, by organising the discharge of responsibilities to allow an individual to worship at a particular time or in a particular manner. Employees have a duty to observe the rules governing

150. Adopted on 23 June 2010.

151. PACE Recommendation 1927 (2010) on Islam, Islamism and Islamophobia in Europe, adopted on 23 June 2010.

their working hours, and dismissal for failing to attend work on account of religious observances does not give rise to an issue falling within the scope of Article 9.¹⁵² In cases concerning the absence or refusal to work on days for religious activities, the measures taken by the authorities in respect of the applicants were considered not to have been based on the applicants' religious beliefs but to have been justified by the specific contractual obligations between the persons concerned and their respective employers. In cases involving restrictions placed by employers on an employee's ability to observe religious practice, the Commission held in several decisions that the possibility of resigning from the job and changing employment meant that there was no interference with the employee's religious freedom.¹⁵³

72. The Court also considered that the refusal to adjourn a hearing listed on the date of a Jewish holiday, even supposing that it constituted an interference with the applicant's right under Article 9, was prescribed by law and was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice and the principle that cases be heard within a reasonable time.¹⁵⁴

73. In *Eweida and Others v. the United Kingdom*, two employees (third and fourth applicants) were dismissed from employment for expressing a conscientious objection to performing a duty that they believed would condone, approve or facilitate same-sex conduct. While reiterating the importance of protecting the right to freedom of religion and accepting that, in the case of the third applicant, the local authority's requirement that all registrars of births, marriages and deaths be designated also as civil-partnership registrars had had a particularly detrimental impact on her because of her religious beliefs, the Court held that State in question had acted within its margin of appreciation and dismissed the claim for reasonable

152. See *X v. the United Kingdom*, decision of 12 March 1981; *Konttinen v. Finland*, decision of 3 December 1996; *Stedman v. the United Kingdom*, decision of 9 April 1997; *Kosteski v. "the former Yugoslav Republic of Macedonia*, judgment of 13 April 2006, §39.

153. *Konttinen v. Finland* (protection afforded by Article 9 was found not to extend to the dismissal of a public servant who failed to adhere to his working hours on the grounds that the Seventh-day Adventist Church, to which he belonged, prohibited its members from working after sunset on Fridays); See also *Stedman v. the United Kingdom* (dismissal of an employee by her private-sector employer for refusing to work on Sundays).

154. *Francesco Sessa v. Italy*, judgment of 3 April 2012, §37 (the applicant alleged that the refusal of the judicial authority to adjourn the hearing in question, which had been listed for a date corresponding to a Jewish religious holiday, had prevented him from appearing in his capacity as representative of one of the complainants and had infringed his right to manifest his religion freely).

accommodation requested by the applicants.¹⁵⁵ Similarly in the case of the fourth applicant, the Court did not find that the margin of appreciation had been exceeded. While the Court did not consider that an individual's decision to enter into a contract of employment and to undertake responsibilities which he knew would have an impact on his freedom to manifest his religious belief was determinative of the question whether or not there been an interference with Article 9 rights, this was a matter to be weighed in the balance when assessing whether a fair balance was struck. However, for the Court the most important factor to be taken into account was that the employer's action was intended to secure the implementation of its policy of providing a service without discrimination.¹⁵⁶ With respect to the first applicant, who complained that her employer placed restrictions on her visibly wearing Christian cross around her neck while at work, the Court considered the issues in terms of the positive obligation on the State authorities to secure the rights under Article 9 to those within their jurisdiction in view of the fact that the act complained of was carried out by a private company and was not therefore directly attributable to the respondent State. The Court examined therefore whether the right of the applicant to freely manifest her religion was sufficiently secured within the domestic legal order and whether a fair balance was struck between her rights and those of others. It concluded that a fair balance had not been struck between the applicant's desire to manifest the religious belief on the one side and the employer's wish to project a certain corporate image. With respect to the second applicant, the Court found on the contrary no violation of Article 9, taken alone or in conjunction with Article 14 of the Convention, bearing in mind the reason for asking her to remove the cross or to wearing it in other forms, namely the protection of health and safety on a hospital ward.

74. Another important aspect relates to the protection from discrimination on grounds of religion in the employment. In the General Policy Recommendation No. 14 on combating racism and racial discrimination in employment, ECRI stresses the importance to successful businesses of creating workplace environments where workers are respected and their contributions valued, regardless of *inter alia* their religion. ECRI recommends that the Governments of member States *inter alia* take all necessary action to eliminate *de jure* and *de facto* racism, racial discrimination and racial harassment on grounds such as "race", colour, language, religion, nationality, or national or ethnic origin (hereafter: racism, racial discrimination and racial harassment) in employment in both

155. *Eweida and Others v. United Kingdom*, judgment of 15 January 2013, §106.

156. *Ibid.*, §109.

the public and private sectors and adopt national law and enforcement mechanisms which ensure the active enforcement of rights and full equality in practice. It also recommends ensuring that management and human resources personnel receive the necessary initial training and professional support to be able to interact with ethnically, religiously and linguistically diverse employees and to eliminate and prevent racial discrimination and racial harassment.¹⁵⁷

75. In its Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, the Parliamentary Assembly recalled that expression of faith is sometimes unduly limited by national legislation and policies which do not allow the accommodation of religious beliefs and practices.¹⁵⁸ It therefore called upon member States to promote reasonable accommodation within the principle of indirect discrimination so as to uphold freedom of conscience in the workplace while ensuring that access to services provided by law is maintained and the right of others to be free from discrimination is protected.¹⁵⁹

76. With regard to the celebration of religious holidays, the Advisory Committee on the Framework Convention for the Protection of National Minorities encourages the authorities to continue the dialogue with representatives of religious communities and national minorities celebrating religious holidays on days which are not by law non-working days in order to find appropriate solutions to offer persons belonging to national minorities equal opportunities to benefit from their right to manifest their religion or belief.¹⁶⁰

157. On the issue of discriminatory dismissal from work on grounds of religion – see also *Ivanova v. Bulgaria*, judgment of 12 April 2007.

158. PACE Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, §1. In §2 of the Resolution the Parliamentary Assembly refers to the reasonable accommodation of religious beliefs and practices as a pragmatic means of ensuring the effective and full enjoyment of freedom of religion. When it is applied in a spirit of tolerance, this concept allows all religious groups to live in harmony in the respect and acceptance of their diversity. Furthermore in §6.1 member States are called upon to promote a culture of tolerance and “living together” based on the acceptance of religious pluralism and on the contribution of religions to a democratic and pluralist society, but also on the right of individuals not to adhere to any religion.

159. §§ 6.2 and 6.2.2. See also *Institutional accommodation and the citizen: legal and political interaction in a pluralist society*. Trends in Social Cohesion, No. 21, Council of Europe Publishing Editions.

160. Second Opinion of the Advisory Committee on Poland, adopted on 20 March 2009, §112. See also Committee of Ministers’ Resolution CM/ResCMN(2012)20 of 28 November 2012 on the implementation of the Framework Convention for the Protection of National Minorities by Poland.

77. Likewise, the Venice Commission made the following suggestions in its Guidelines for Legislative Reviews of Law Affecting Religion and Belief:

Days for religious activities. The two types of day that raise questions of exemptions are first, days of the week that have religious significance (for example, for Friday prayers and Saturday or Sunday worship), and second, calendar days of religious significance (Christmas, Yom Kippur, Ramadan). To the extent possible, State laws should reflect the spirit of tolerance and respect for religious belief.

Food. There are several foods that are prohibited by many religious and ethical traditions, including meat generally, pork, meat that is not prepared in accordance with ritual practices, and alcohol. In a spirit of promoting tolerance, the State could encourage institutions that provide food – particularly schools, hospitals, prisons, and the military – to offer optional meals for those with religious or moral requirements.¹⁶¹

78. In its Recommendation 1396 (1999) on religion and democracy, the Parliamentary Assembly recommended that the Committee of Ministers invite the governments of the member States:

13.1. to guarantee freedom of conscience and religious expression within the conditions set out in the European Convention on Human Rights for all citizens and, in particular, to:

[...]

b. facilitate, within the limits set out in Article 9 of the European Convention on Human Rights, the observation of religious rites and customs, for example with regard to marriage, dress, holy days (with scope for adjusting leave) and military service;

79. Respect of the right of members of armed forces to freedom of thought, conscience and religion was reiterated by the Committee of Ministers in February 2010 in its Recommendation on human rights of members of armed forces. At the same time it specified that specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should however comply with the requirements of Article 9, paragraph 2, of the Convention. Moreover there should be no discrimination between members of the armed forces on the basis of their religion or belief.¹⁶²

161. Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004).

162. Recommendation CM/Rec(2010)4 on human rights of members of armed forces adopted on 24 February 2010, Appendix H 40.

80. In the case of *Kalaç v. Turkey*, the Court considered that in choosing to pursue a military career a person is accepting of his own accord a system of military discipline that by its very nature imply the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians. States may adopt for their armies disciplinary regulations forbidding this or that type of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service.¹⁶³ In this case, the applicant, within the limits imposed by the requirements of military life, was able to fulfil the obligations which constitute the normal forms through which a Muslim practises his religion. For example, he was in particular permitted to pray five times a day and to perform his other religious duties, such as keeping the fast of Ramadan and attending Friday prayers at the mosque. The Court accordingly concluded that the applicant's compulsory retirement was not prompted by the way the applicant manifested his religion but by his conduct and attitude breaching military discipline and infringing the principle of secularism.¹⁶⁴

iv. Rights of persons deprived of their liberty

81. Prison authorities are expected to recognise the religious needs of those deprived of their liberty by allowing inmates to take part in religious observances. The European Prison Rules¹⁶⁵ aimed at providing guidance to prison administration¹⁶⁶ state *inter alia* that:

29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.

29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.

163. *Kalaç v. Turkey*, judgment of 1 July 1997, §28.

164. *Ibid.*, §29.

165. Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006. In its Commentary under Rule 29 on 'Freedom of thought, conscience and religion' it is stated that while the place of religion in prison has been regarded as unproblematic and limited itself to positive provision on how best to organise religion life in prison, the increase in some countries of prisoners with strong religious views requires a more principle approach as well as a positive requirement.

166. Rules 29 (2)-(3) were cited in the above-mentioned case of *Jakobski v. Poland*.

Rule 22 also proposes that religious preferences be taken into account when prisoner's diets are determined.

82. Similar provisions regarding nutrition and freedom of religion or belief are included in the Committee of Ministers' recommendation¹⁶⁷ focusing on foreign prisoners:

30.1. Prisoners shall have the right to exercise or change their religion or belief and shall be protected from any compulsion in this respect;

30.2. Prison authorities shall, as far as practicable, grant foreign prisoners access to approved representatives of their religion or belief.

However, in some instances this Recommendation goes further than the above-mentioned European Prison Rules, for example:

20. [...] authorities shall, where possible, provide prisoners with opportunities to purchase and cook food that makes their diet more culturally appropriate and to take their meals at times that meet their religious requirements.

Moreover in order to ensure good order, safety and security the Recommendation recommends States:

32.2. Prison staff shall be alert to potential or actual conflicts between groups within the prison population that may arise due to cultural or religious differences and inter-ethnic tensions.

32.4. The nationality, culture or religion of a prisoner shall not be the determinative factors in the assessment of the risk to safety and security posed by such prisoner.

83. In recent judgments the European Court of Human Rights has drawn the authorities' attention to the importance of the Committee of Ministers' recommendation on European Prison Rules, notwithstanding their non-binding nature.¹⁶⁸ The Court's case-law shows that where religion or belief dictates a particular diet, this should be respected by the authorities providing that this is not unreasonable or unduly burdensome.¹⁶⁹ Further, adequate provision should be made to allow

167. Recommendation CM/Rec (2012)12 concerning foreign prisoners, adopted on 10 October 2012.

168. *Sławomir Musiał v. Poland*, judgment of 20 January 2009, §96; *Vartic v. Romania (No. 2)*, judgment of 17 December 2013, §53.

169. See for instance *Jakobski v. Poland*, judgment of 7 December 2010, §§42–55 (refusal to provide a practising Buddhist prisoner with a meat-free diet as required by the dictates of his faith was held to have constituted a violation of Article 9). See also *X v. the United Kingdom*, decision of 5 March 1976.

detainees to take part in religious worship or to permit prisoners access to spiritual guidance.¹⁷⁰ However, the maintenance of good order and security in prison will normally readily be recognised as legitimate state interests. Article 9 cannot, for example, be used to require recognition of a special status for prisoners who claim that wearing prison uniform and being forced to work violate their beliefs.¹⁷¹ Further, in responding to such order and security interests, a rather wide margin of appreciation is recognised on the part of the authorities. For example, the need to be able to identify prisoners may thus warrant the refusal to allow a prisoner to grow a beard, while security considerations may justify denial of the supply of a prayer-chain¹⁷² or a book containing details of martial arts to prisoners, even in cases where it can be established that access to such items is indispensable for the proper exercise of a religious faith.

84. For instance, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concern about the lack of efforts to allow persons belonging to national minorities in the penitentiary system to respect their culture and religion.¹⁷³ It called the authorities of a State Party to conduct comprehensive awareness-raising and training activities among relevant public services, in particular law enforcement and the judiciary, as well as society in general to ensure better understanding of applicable international and national human rights guarantees.¹⁷⁴

170. In the related cases of *Poltoratskiy v. Ukraine* and *Kuznetsov v. Ukraine*, judgments of 29 April 2003 (prisoners on death row complained that they had not been allowed visits from a priest nor to take part in religious services available to other prisoners). The applicants succeeded in these cases on the ground that these interferences had not been in accordance with the law as the relevant prison instruction could not so qualify within the meaning of the Convention.

171. *McFeeley and Others v. the United Kingdom*, decision of 15 May 1980.

172. *X v. Austria*, decision of 15 February 1965.

173. Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §61. See also Committee of Ministers' Resolution CM/ResCMN(2013)1 of 30 April 2013 on the implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation.

174. *Ibid.*, §63.

v. Conscientious objection to military service

85. As regards conscientious objection to military service, in the appendix to Recommendation CM/Rec(2010)4 on human rights of members of armed forces, the Committee of Ministers recommend to member States:

41. For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them.

42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.

86. In the case of *Bayatyan v. Armenia*¹⁷⁵ the Grand Chamber ruled for the first time that the failure to permit civilian service as an alternative could in certain circumstances violate Article 9. The Court considered that a shift in the interpretation of Article 9 was necessary and foreseeable and, in the light of the evolution of the law and practice of European States and of international agreements, it was no longer appropriate to read it in conjunction

175. *Bayatyan v. Armenia* [GC], judgment of 7 July 2011.

with Article 4 paragraph 3.b.¹⁷⁶ There was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection and the Convention, as a “living instrument”, had to reflect such developments.

87. The Court pointed out that almost all the member States of the Council of Europe, which ever had or still have compulsory military service, had introduced alternatives to such service in order to reconcile the possible conflict between individual conscience and military obligations. Accordingly, a State which had not done so enjoyed only a limited margin of appreciation and had to advance convincing and compelling reasons to justify any interference. In this connection the Court also reiterated that pluralism, tolerance and broadmindedness are hallmarks of a “democratic society”, and that:

126 [...] respect on the part of the State towards the beliefs of a minority religious group like the applicant’s by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.

176. For a long time the Court did not recognise the right to conscientious objection to military service as being covered by Article 9 in the light of Article 4§3.b of the Convention which makes specific provision for service of a military character, see for example *X v. the Federal Republic of Germany*, decision of 5 July 1977. Indeed the Court consider that Article 9 did not in itself imply any right of recognition of conscientious objection to compulsory military service unless this was recognised by national law, see, for example, *G.Z. v. Austria*, decision of 2 April 1973. Article 4§3.b of the Convention does not require States to provide substitute civilian service for conscientious objectors. The Court had nevertheless accepted that compulsory military service could give rise to other Convention considerations, in particular where it could be argued that sanctions for failure to carry out military service requirements could operate in a discriminatory manner, see for example, *Thlimmenos v. Greece* [GC], judgment of 6 April 2000 (violation of Article 14 read in conjunction with Article 9). See also *Autio v. Finland*, decision of 6 December 1991 (lengthier period of service prescribed for civilian service as opposed to military service falls within a State’s margin of appreciation); *Taştan v. Turkey*, judgment of 4 March 2008, §§27-31 (military service obligation imposed upon a 71-year old who had been forced to undertake the same activities and physical exercises as 20-year-old recruits constituted degrading treatment within the meaning of Article 3); *Ulke v. Turkey*, judgment of 24 January 2006, §§61-62, (the applicant, a peace activist who repeatedly had been punished for refusal to serve in the military on account of his beliefs, had been subjected to “inhuman” treatment due to “constant alternation between prosecutions and terms of imprisonment” and the possibility that this situation could theoretically continue for the rest of his life).

88. The manner in which the alternative service is regulated by the State has also been considered by other Council of Europe bodies.¹⁷⁷ In a collective complaint decision *Quaker Council for European Affairs against Greece*,¹⁷⁸ the European Committee of Social Rights addressed the issue of alternative civilian service for conscientious objectors:

25. [...] 18 additional months [...] amounts to a disproportionate restriction on “the right of the worker to earn his living in an occupation freely entered upon”, and is contrary to Article 1 para.2 of the Charter.

Furthermore, the European Committee of Social Rights clearly stated in its Conclusions regarding Estonia:¹⁷⁹

Under Article 1§2 of the Charter, alternative service may not exceed one and a half times the length of armed military service.

89. The Commissioner for Human Rights has stressed that the right to conscientious objection to military service should be guaranteed in all parts of Europe.¹⁸⁰ He added that when this right is recognized by law or practice, there should be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; and no discrimination against conscientious objectors because they have failed to perform military service; also, the alternative service should not be punitive in terms of having a much longer duration.

90. The Venice Commission has in a legal opinion regarding Armenia recalled that any form of control over alternative service should be of civilian nature and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service. In

177. The Committee of Ministers stated in Recommendation R(87)8 regarding conscientious objection to compulsory military service, §10: alternative service shall not be of a punitive nature. Its duration shall, in comparison with military service, remain within reasonable limits.

178. Decision on the merits of 27 April 2001.

179. European Committee of Social Rights, Conclusions 2008, Estonia, Article 1.2.

180. Human Rights Comment by Thomas Hammarberg posted on 2 February 2012.

addition, the authorities should make sure that any byelaw, other regulation or practical application measure is fully in line with the principle of civilian control over alternative service.¹⁸¹

vi. Situations in which individuals are obliged to disclose or act against their religion or beliefs

91. While there is no explicit reference in the text of Article 9 to the prohibition of coercion to hold or to adopt a religion or belief, Article 9 issues may also arise in situations in which an individual is obliged to disclose or act against his or her religion or belief.

92. A requirement to have religious faith disclosed in identity documents is incompatible with an individual's right not to be obliged to disclose his or her religion. In *Sinan Isik v. Turkey*¹⁸² the Court found a violation of Article 9 which had arisen not from the refusal to indicate the applicant's faith ("Alevi" rather than "Islam") on his identity card but from the fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional. The Court underlined that the freedom to manifest one's religion had a negative aspect, namely the right not to be obliged to disclose one's religion.

93. However, there may be two sets of circumstances in which it may be justified to require such disclosure. First, a State may seek to ascertain the values and beliefs held by candidates for public employment on the grounds that they hold views incompatible with the office.¹⁸³ Yet, this may

181. CDL-AD(2011)051 Opinion on the draft law on amendments and additions to the law on alternative service of Armenia, adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011), § 38. Since then the Armenian law on alternative service was amended in June 2013, offering a genuine civilian service option to conscientious objectors, Human Rights Commissioner, Nils Muižnieks' report following his visit to Armenia from 5 to 9 October 2015, §90. Furthermore, in May 2013 Armenia amended its law implementing the Criminal Code by providing for criminal proceedings against conscientious objectors to be discontinued, those imprisoned to be released and their criminal records to be expunged, ECRI conclusions on the implementation of the recommendations in respect of Armenia subject to interim follow-up, adopted on 5 December 2013, §1.

182. Judgment of 2 February 2010.

183. *Vogt v. Germany*, judgment of 26 September 1995, §§41-68 (disposal under Articles 10 and 11).

in turn involve an interference with freedom of expression under Article 10.¹⁸⁴ Secondly, an individual seeking to take advantage of a special privilege made available in domestic law on the grounds of belief may be expected to disclose and to justify his beliefs. This may occur, for example, in respect of application for recognition of conscientious objection to a requirement to carry out military service where such an exemption is recognised in domestic law.¹⁸⁵ In *Kosteski v. "the former Yugoslav Republic of Macedonia"*,¹⁸⁶ the applicant had been penalised for failing to attend his place of work on the day of a religious holiday. The Court observed as follows:

39. [...] While the notion of the State sitting in judgment on the state of a citizen's inner and personal beliefs is abhorrent and may smack unhappily of past infamous persecutions, the Court observes that this is a case where the applicant sought to enjoy a special right bestowed by [domestic] law which provided that Muslims could take holiday on particular days.[...] In the context of employment, with contracts setting out specific obligations and rights between employer and employee, the Court does not find it unreasonable that an employer may regard absence without permission or apparent justification as a disciplinary matter. Where the employee then seeks to rely on a particular exemption, it is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation when that claim concerns a privilege or entitlement not commonly available and, if that substantiation is not forthcoming, to reach a negative conclusion (see, *mutatis mutandis*, cases concerning conscientious objection [...]). The applicant however was not prepared to produce any evidence that could substantiate his claims. To the extent therefore that the proceedings disclosed an interference with the applicant's freedom of religion, this was not disproportionate and may, in the circumstances of this case, be regarded as justified in terms of the second paragraph, namely, as prescribed by law and necessary in a democratic society for the protection of the rights of others.

94. In the above case, the qualification "privilege or entitlement not commonly available", however, suggests a restricted application of this principle. For example, in respect of parents who seek to have their

184. For example, in *Lombardi Vallauri v. Italy*, judgment of 20 October 2009 (a university lecturer had been refused renewal of a contract for a teaching post at a denominational university since it was considered that he held views that were incompatible with the religious doctrine of the university in which he had worked for some 20 years). A violation of Article 10 was established on account of the failure by the university and by the domestic courts to explain how the applicant's views were liable to affect the interests of the university.

185. See *N. v. Sweden*, decision of 11 October 1984; *Raninen v. Finland*, decision of 7 March 1996.

186. Judgment of 13 April 2006.

philosophical convictions taken into account in the provision of education for their children, education authorities may not probe too far into the beliefs of such parents. This situation arose in *Folgerø and Others v. Norway*, in which domestic arrangements allowing parents to request partial exemption from classes for their children were considered unsatisfactory in terms of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9, since the system was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of “intimate aspects of their own religious and philosophical convictions” and that the potential for conflict was likely to deter them from making such requests.¹⁸⁷

95. Furthermore, requiring of elected representatives to take a religious oath against their conscience or beliefs upon election to Parliament is equivalent to requiring them to swear allegiance to a particular religion, which is not compatible with Article 9 of the Convention.¹⁸⁸

96. Similarly, domestic law may not impose an obligation to support a religious organisation by means of taxation without recognising the right of an individual to leave the church and thus obtain an exemption from the requirement.¹⁸⁹ However, this principle does not extend to general legal obligations falling exclusively in the public sphere, and thus taxpayers may not demand that their payments are not allocated to particular purposes.¹⁹⁰ One should also distinguish between taxes aimed at financing public functions performed by churches (e.g. operating cemeteries, administration of burials, maintaining buildings of historic value or holding registers of elderly persons) and taxes aimed at financing church functions of an exclusively religious character. If the total amount of the tax remains reasonably proportionate to the cost of the public functions performed by the church, one cannot say that levying of a reduced church tax on a non-member constitutes his contributing to the religious activities of the church incompatible with Article 9.¹⁹¹

97. The Venice Commission recalls in its Guidelines for Legislative Reviews of Law Affecting Religion and Belief that conscientious objections may be grounds for refusing to take oaths or to perform jury service. To the

187. *Folgerø and Others v. Norway* [GC], judgment of 29 June 2007, §§98 and 100.

188. *Buscarini and Others v. San Marino* cited above.

189. *Darby v. Sweden*, judgment of 23 October 1990.

190. *C. v. the United Kingdom*, decision of 15 December 1983.

191. *Bruno v. Sweden*, decision of 28 August 2001.

extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population.¹⁹²

98. Finally, in its Resolution 1763 (2010) on the right to conscientious objection in lawful medical care, the Parliamentary Assembly dealt with the practice of health-care providers refusing to provide certain health services based on religious, moral or philosophical objections. Recognising the right of an individual to conscientiously object to performing a certain medical procedure, the Assembly invited Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services.¹⁹³

vii. Medical treatment issues

99. In the case of *Pretty v. the United Kingdom* the Court considered that the firm views of the applicant concerning assisted suicide did not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in the second sentence of Article 9, paragraph 1, and that this issue was to be seen as the applicant's commitment to the principle of personal autonomy, more appropriate for discussion under Article 8 of the Convention.¹⁹⁴

100. Recommendation 1418 (1999) of the Parliamentary Assembly on the protection of the human rights and dignity of the terminally ill and the dying¹⁹⁵ recommend *inter alia*:

9. [...] the Committee of Ministers encourage the member States of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects: [...]

c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while: [...]

i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member States, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally';

192. Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), III. L.

193. PACE Resolution 1763 (2010) on the right to conscientious objection in lawful medical care, adopted on 7 October 2010, §4.

194. *Pretty v. the United Kingdom*, judgment of 29 April 2002, §82.

195. Adopted by the Parliamentary Assembly on 25 June 1999.

- ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
- iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death."

101. Situations may occur in which objection is taken to necessary medical treatment on grounds of conscience or belief (for example, to procedures necessitating a blood transfusion). The absolute right of an adult, who suffers from no mental incapacity, to make decisions concerning medical treatment, including the right to choose not to receive treatment, even when this may involve a risk to life is respected.¹⁹⁶ Similarly, this principle of autonomy or self-determination is recognised by Article 8.¹⁹⁷

102. Article 8 further encompasses the exercise of parental responsibilities including the right to take decisions concerning the upbringing of their children, again including decisions concerning medical treatment.¹⁹⁸ A similar case could be made for state intervention in respect of adults whose state of health renders them either vulnerable to undue pressure or who cannot be deemed to be fully competent to take decisions concerning their treatment.¹⁹⁹

103. The Venice Commission recalls in its Guidelines for Legislative Reviews of Law Affecting Religion and Belief that some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and which

196. *Jehovah's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §§137-138.

197. In *Avilkina and Others v. Russia*, judgment of 6 June 2013, the Court examined one further aspect of the refusal to undergo the blood transfusion. The Court found a violation of Article 8 of the Convention (right to respect for private and family life) on the account that the data on the refusals of the applicants', who were Jehovah's Witnesses', to undergo blood transfusion had been disclosed by the hospital to the prosecutor's office in the context of their investigation aimed at protecting public health.

198. See *Nielsen v. Denmark*, judgment of 28 November 1988, §61: "Family life in this sense, and especially the rights of parents to exercise parental authority over their children, having due regard to their corresponding parental responsibilities, is recognised and protected by the Convention, in particular by Article 8. Indeed the exercise of parental rights constitutes a fundamental element of family life."

199. Cf. *Kokkinakis v. Greece*; *Keenan v. the United Kingdom*, judgment of 3 April 2001, §§88-101. But cf. *Riera Blume and Others v. Spain*, judgment of 14 October 1999, §§31-35 (complaints that "de-programming treatment" involved a violation of Article 9 avoided on account of a finding of violation of Article 5).

States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that they wish.²⁰⁰ The Venice Commission also stated in a legal opinion:²⁰¹

Providing for the liquidation of a religious organization if it teaches its members to refuse medical aid to its members in life threatening circumstances must be carefully construed. Mature individuals have a right to refuse medical treatment. On the other hand, it is objectionable for the State to turn a blind eye to such practices in the case of children, notwithstanding that the ban is based on genuine religious motives.

viii. Proselytism

104. Paragraph 1 of Article 9 specifically refers to “teaching” as a recognised form of manifestation of belief. The right to try to persuade others of the validity of one’s beliefs is also implicitly supported by the reference in the text to the right to change [one’s] religion or belief. The right to proselytise by attempting to persuade others to convert to another’s religion is thus clearly encompassed within the scope of Article 9.

105. As the Court noted in the *Kokkinakis v. Greece* judgment:

31. [...] While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to “manifest [one’s] religion”. Bearing witness in words and deeds is bound up with the existence of religious convictions. ... [freedom to manifest one’s religion] includes in principle the right to try to convince one’s neighbour, for example through “teaching”, failing which, moreover, “freedom to change [one’s] religion or belief”, enshrined in Article 9, would be likely to remain a dead letter.

106. However this right is not absolute, and may be limited where it can be shown by the State that this is based upon considerations of public order or the protection of vulnerable individuals against undue exploitation. The jurisprudence distinguishes between “proper” and “improper” proselytism, a distinction reflected in other documents adopted by Council of Europe institutions such as Parliamentary Assembly Recommendation 1412 (1999) on the illegal activities of sects which calls for domestic action against

200. Guidelines “L. Exemptions from laws of general applicability”

201. CDL-AD(2010)054 Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§97-98.

“illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature”, the provision and exchange between States of information on such sects, and the importance of the history and philosophy of religion in school curricula with a view to protecting young persons.²⁰²

107. In the already mentioned case of *Kokkinakis v. Greece* a Jehovah’s Witness had been sentenced to imprisonment for proselytism, an offence specifically prohibited both by the Greek Constitution and by statute. The Court at the outset accepted that the right to try to convince others to convert to another faith was included within the scope of the guarantee, failing which “freedom to change [one’s] religion or belief”, enshrined in Article 9, would be likely to remain a dead letter”. While noting that the prohibition was prescribed by law and had the legitimate aim of protecting the rights of others, the Court could not, in the particular circumstances, accept that the interference had been shown to have been justified as “necessary in a democratic society” for the protection of the rights and freedoms of others. In its view, a distinction had to be drawn between “bearing Christian witness” or evangelicalism and “improper proselytism” involving undue influence or even force. The domestic courts had assessed the criminal liability of the applicant by merely reproducing the wording of the legislation and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means. The failure of the domestic courts to specify the reasons for the conviction meant that it was impossible to show that there had been a pressing social need for the conviction.²⁰³ By contrast, in *Larissis and Others v. Greece*,²⁰⁴ the conviction of senior officers who were members of the Pentecostal Faith for the proselytism of three airmen under their command was deemed not to be a breach of Article 9 in light of the characteristics of military life and of the crucial nature of military hierarchical structures, which the Court accepted could potentially involve a risk of harassment of a subordinate where the latter sought to withdraw from a conversation about religion initiated by a superior officer.

202. PACE Recommendation 1412 (1999) on the illegal activities of sects, §10.

203. *Kokkinakis v. Greece*, §§48-49.

204. Judgment of 24 February 1998.

108. Protection against coercion or indoctrination may also arise in other ways. For example, as noted below in accordance with Article 2 of Protocol No. 1 the philosophical or religious convictions of parents must be respected by the State when providing education, and thus a parent may prevent the “indoctrination” of his child in school.²⁰⁵

109. The Venice Commission recalls in its Guidelines for legislative reviews of laws affecting religion or belief that the issue of proselytism and missionary work is a sensitive one in many countries. However, it is important to remember that, at its core, the right to express one’s views and describe one’s faith can be a vital dimension of religion. The right to express one’s religious convictions and to attempt to share them with others is covered by the right to freedom of religion or belief. Moreover, it is covered by the right to freedom of expression under Article 10 as well. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved.²⁰⁶ The Venice Commission has further recommended that the offence [coercion] ought to be defined in religion-neutral terms to focus on inappropriate coercion, pressure tactics, abuse of position, deception, and so forth. There is a hazard in focusing on proselytism, even if it is restricted to a vague notion such as “improper proselytism”, because of the tendency of any such norm to be applied in discriminatory ways against smaller and less popular religions.²⁰⁷

ix. Right to education of children in conformity with the parents’ religious and philosophical convictions

110. Article 2 of Protocol No. 1 to the Convention on the right to education provides:

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

205. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976. See also *Angeleni v. Sweden*, decision of 3 December 1986 and *C.J., J.J and E.J. v. Poland*, decision of 16 January 1996.

206. CDL-AD(2004)028 Guidelines for legislative reviews of laws affecting religion or belief, p.13.

207. CDL-AD(2010)054 Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §61.

111. As explicitly stated in the second sentence of the article the right of parents to respect for their religious and philosophical convictions in the education and teaching of their children belongs to the parents of a child and not to the child itself²⁰⁸ or to any school or religious association.²⁰⁹ However the duty to respect any such “convictions” of parents is subordinate to the primary right of a child to receive education²¹⁰, and thus the provision does not provide for the recognition of a parent’s wish, for example, that a child is given a general exemption from attending school on Saturdays on religious grounds,²¹¹ or that a child is allowed to be educated at home rather than in a school.²¹²

112. The meaning of the term “philosophical convictions” employed in the second sentence of Article 2 of Protocol No. 1 was interpreted by the Court in its judgment in the case of *Campbell and Cosans v. United Kingdom*²¹³ as convictions which are worthy of respect in a “democratic society” and are not incompatible with human dignity; in addition, they must not conflict with the fundamental right of the child to education, the whole of Article 2 being dominated by its first sentence. The Court has not in further detail defined the adjective “religious”, other than applying it to the convictions of all who profess a recognised religion.²¹⁴ The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance.²¹⁵ It also appears to exclude implicitly the “religious” convictions of the members of a sect and beliefs which do not attain a certain level of cogency, seriousness, cohesion and importance from the scope of Article 2 of Protocol No. 1.²¹⁶

113. The word “respect” in Article 2 of Protocol No. 1 means more than “acknowledge” or “take into account”; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State.²¹⁷

208. *Eriksson v. Sweden*, decision of 22 June 1989, §93.

209. *Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v. Sweden*, decision of 6 March 1987.

210. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, §50.

211. *Martins Casimiro and Cerveira Ferreira v. Luxembourg*, decision of 27 April 1999.

212. *Konrad and Others v. Germany*, decision of 11 September 2006.

213. Judgment of 25 February 1982, §36.

214. *Valsamis v. Greece*, judgment of 18 December 1996, §27.

215. *Valsamis v. Greece*, §§25 and 27, and *Campbell and Cosans*, §§36-37.

216. *Hasan Zengin v. Turkey*, judgment of 9 October 2007.

217. *Campbell and Cosans*, cited above, §37 (a).

114. The Court resumed the general principles developed under Article 2 of Protocol No. 1 in the case of *Folgerø and Others v. Norway*,²¹⁸ where it indicated in particular the following:

- The two sentences of Article 2 of Protocol No. 1 must be interpreted not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention.²¹⁹
- It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching.²²⁰
- Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire state education programme.²²¹
- It is in the discharge of a natural duty towards their children – parents being primarily responsible for the “education and teaching” of their children – that parents may require the state to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.²²²
- The setting and planning of the curriculum fall in principle within the competence of the Contracting States.²²³ In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable.²²⁴
- The State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an

218. Paragraph 84.

219. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, §52.

220. *Ibid.*, §50.

221. *Ibid.*, §51.

222. *Ibid.*, §52.

223. *Valsamis v. Greece*, §28.

224. *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, §53.

aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions²²⁵ and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this by a given school or teacher by carelessness, lack of judgment or misplaced proselytism.²²⁶

115. Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education.²²⁷ The Court also noted that it remains, in principle, within the national margin of appreciation left to the States under Article 2 of Protocol No. 1 to decide whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted.²²⁸

116. The obligation on Contracting States to respect the religious and philosophical convictions of parents does not apply only to the content of teaching and the way it is provided; it binds them "in the exercise" of all the "functions" – in the terms of the second sentence of Article 2 of Protocol No. 1 – which they assume in relation to education and teaching.²²⁹ That includes without any doubt the organisation of the school environment where domestic law attributes that function to the public authorities. The decision whether religious symbols should be present in State-school classrooms also forms part of these functions and, accordingly, falls within the scope of the second sentence of Article 2 of Protocol No. 1.²³⁰

117. In the case of *Lautsi and Others v. Italy*, the Grand Chamber of the Court considered that the decision whether crucifixes should be present in State-school classrooms was, in principle, a matter falling within the margin of appreciation of the respondent State. It considered that the fact that crucifixes in State-school classrooms in Italy conferred on the country's majority religion predominant visibility in the school environment was not in itself sufficient to denote a process of indoctrination. A crucifix on a wall is an essentially passive symbol and this point is of importance, particularly having regard to the principle of neutrality. It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities. On

225. *Ibid.*

226. *Folgerø and Others v. Norway*, §89.

227. *Kjeldsen, Busk Madsen and Pedersen*, §54.

228. *Grzelak v. Poland*, judgment of 15 June 2010, §104.

229. *Lautsi and Others v. Italy* [GC], judgment of 18 March 2011, §59; *Folgerø*, cited above, §84, essentially *Kjeldsen, Busk Madsen and Pedersen*, cited above, §50; *Valsamis v. Greece*, 18 December 1996, §27; *Hasan and Eylem Zengin*, cited above, §49.

230. *Lautsi and Others v. Italy*, §§63 and 65.

the other hand there was nothing to suggest that the authorities were intolerant toward pupils with other religious affiliations or non-believers. The applicant had retained her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions. Accordingly, the Court found no violation of Article 2 of Protocol No. 1.²³¹

118. Consequently, one can conclude that with respect to the question of pluralism and objectiveness, arrangements in education and teaching may indeed reflect historical tradition and dominant religious adherence, and therefore they fall within the State's margin of appreciation,²³² for instance whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted, or in planning and setting the curriculum, or as regards the display of a religious symbol on classrooms, without this being seen as a departure from the principles of pluralism and objectivity amounting to indoctrination.²³³ However, when the "information and knowledge" on the syllabus of the courses complained of are not "conveyed in an objective, critical and pluralistic manner", the state authorities are under an obligation to grant children "full exemption" from these lessons in accordance with the parents' religious or philosophical convictions, since a mere partial exemption does not suffice to ensure respect for these convictions.²³⁴

119. One of the core objectives of the Framework Convention for the Protection of National Minorities is to maintain and develop the culture of persons belonging to national minorities, and to preserve the essential

231. *Lautsi and Others v. Italy* [GC], judgment of 18 March 2011, §§70, 72, 74, 75

232. Refer on this point, mutatis mutandis, to the previously cited *Folgerø and Zengin* judgments. In the *Folgerø* case, in which the Court was called upon to examine the content of "Christianity, religion and philosophy" (KRL) lessons, it found that the fact that the syllabus gave a larger share to knowledge of the Christian religion than to that of other religions and philosophies could not in itself be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination. It explained that in view of the place occupied by Christianity in the history and tradition of the respondent State – Norway – this question had to be regarded as falling within the margin of appreciation left to it in planning and setting the curriculum (see *Folgerø*, cited above, § 89). The Court reached a similar conclusion in the context of "religious culture and ethics" classes in Turkish schools, where the syllabus gave greater prominence to knowledge of Islam on the ground that, notwithstanding the State's secular nature, Islam was the majority religion practised in Turkey (see *Zengin*, cited above, § 63) – see *Lautsi and Others v. Italy*, §71.

233. *Folgerø and Others v. Norway* [GC], §89; *Lautsi and Others v. Italy*, §§5, 66 and 70-74, *Grzelak v. Poland*, judgment of 15 June 2010, §104.

234. *Folgerø and Others v. Norway* [GC], §102. See also *Hasan and Eylem Zengin v. Turkey*, §§59-61 and 70, ruling upheld in the case of *Mansur Yalçın and Others v. Turkey*, judgment of 16 September 2014 (despite the changes introduced in the programme of religious culture and ethics, the parents' beliefs were still not fully respected in the education system).

elements of their identity, namely their religion, language, traditions and cultural heritage. Of crucial importance in this context is the respect of the rights of parent's to educate their children in conformity with their own religious and philosophical convictions.

Article 5

1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

[...]

Article 6

1 The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

[...].

120. The Framework Convention is of relevance not only in guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education (right to education) but also in setting standards on how such education should be shaped in terms of content as well as form (rights in education) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.²³⁵

121. Under the above provisions of the Framework Convention, States Parties need to review regularly the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.²³⁶

122. In its Commentary on Education under the Framework Convention, the Advisory Committee makes reference also to the right to education in Article 2 of Protocol No. 1 to the European Convention on Human Rights. Pursuant to Article 17 of the European Convention, on the prohibition of abuse

235. Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Summary Part I 'Introduction'.

236. Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Section 1.4 'Importance of Articles 4 – 6 of the Framework Convention'.

of rights, religious teaching or education, or indeed any other kind of education, should not lead to the violation of the rights of others (whether they are of the same or different religious beliefs). All school subjects, including mathematics, gymnastics, music and arts will also need to be reviewed and adapted from a multicultural and intercultural perspective.²³⁷

123. The effective implementation of the basic principles of tolerance and intercultural dialogue, of dissemination of knowledge to minorities as well as majorities, of equal access to education, and of free and compulsory education requires also that many other elements of identity, such as religion, geographical location, gender, are taken into account.²³⁸ Education has to be flexible so as to adapt to the needs of changing societies and communities and to respond to the needs of students within their diverse social and cultural settings.²³⁹

124. In this respect, the Advisory Committee called, for instance, the authorities of a State Party:

- to ensure that the constitutional guarantees of freedom of conscience and religion are strictly respected and effectively protected everywhere on the territory and that persons belonging to minorities, and minority religions, are not coerced to adopt practices related to a particular faith.²⁴⁰
- to take further steps to ensure that existing practices and curricula concerning religious education do not result in imposing a religion on pupils from another faith group.²⁴¹
- to broaden schooling options, including in terms of non-denominational and multi-denominational schools, in a manner that ensured that the school system reflects the growing cultural and religious diversity of the country.²⁴²

237. *Ibid.*

238. *Ibid.*

239. *Ibid.*, section 2.3 'Article 14 of the Framework Convention'.

240. Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §145. See also Committee of Ministers' Resolution CM/ResCMN(2013)1 of 30 April 2013 on the implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation.

241. For more details see the third Opinion of the Advisory Committee on the United Kingdom, adopted on 30 June 2011, §§133-134.

242. Second Opinion of the Advisory Committee on Ireland, adopted on 6 October 2006, §100. See also Resolution CM/ResCMN(2007)10 of 20 June 2007 on the implementation of the Framework Convention for the Protection of National Minorities by Ireland.

125. While the introduction of elements of intercultural knowledge and dialogue in curricula as well as the need to review curricula, especially in the field of history and religion, have often been included in the Opinions of the Advisory Committee, it must be noted that the Advisory Committee has not had the occasion to pronounce extensively on the issue of religious education or education offered by religious institutions.²⁴³ Yet, where public schools provide denominational religious education organised by each religion according to its own system of principles and beliefs, one should bear in mind that its curriculum is drafted by the respective religious organisations. This matter is closely linked with the principle of the mutual autonomy and independence of State and religion, the obligation of States to refrain from assessing the legitimacy of the religious views²⁴⁴ and their obligation to respect the freedom to manifest religion or belief, in *inter alia*, teaching.

126. In its Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, the Parliamentary Assembly called on States to promote reasonable accommodation within the principle of indirect discrimination so as to respect the right of parents to provide their children with an education in conformity with their religious or philosophical convictions, while guaranteeing the fundamental right of children to education in a critical and pluralistic manner.²⁴⁵

x. Specific questions in relation to children’s right to freedom of thought, conscience and religion

127. The Court has examined several cases involving the resolution of child custody and access by reference to religious belief under Articles 8 and 14 of the Convention holding that the determination of child custody is an aspect of family life.²⁴⁶ In the case of *Vojnity v. Hungary*²⁴⁷ concerning the total removal of a father’s access rights on the grounds that his religious convictions had been detrimental to his son’s upbringing, the Court concluded that there was no reasonable relationship of proportionality

243. Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Section 1.4 ‘Importance of Articles 4-6 of the Framework Convention’.

244. See *Manoussakis and Others v. Greece*, judgment of 26 September 1996, §47; *Hasan and Chaush v. Bulgaria*, §78; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], judgment of 13 February 2003, §1.

245. PACE Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, §§ 6.2 and 6.2.3.

246. *Hoffmann v. Austria*, judgment of 23 June 1993; *Palau-Martinez v. France*, judgment of 16 March 2004; *Ismailova v. Russia*, judgment of 31 août 2006.

247. Judgment of 12 February 2013.

between a total ban on the applicant's access rights and the aim pursued, namely the protection of the best interest of the child, and that consequently the applicant had been discriminated against on the basis of his religious convictions in the exercise of his right to respect for family life.

128. The Commissioner for Human Rights stressed the importance that:²⁴⁸

[...] the child can learn about religion in school, including about the faiths of others. The two go hand in hand. With a clearer self-image, people tend to be more open to messages which demystify what might otherwise appear strange. The aim should be to promote not only tolerance, but respect for others.

129. The Venice Commission has recommended States when reviewing their laws affecting religion or belief to assure that the appropriate balance of autonomy for the child, respect for parent's rights, and the best interests of the child are reached. The Venice Commission views it as problematic when provisions fail to give appropriate weight to decisions of mature minors, or that interfere with parental rights to guide the upbringing of their children. It notes that there is no agreed international standard that specifies at what age children should become free to make their own determinations in matters of religion and belief. To the extent that a law specifies an age, it should be compared to other State legislation specifying age of majority (such as marriage, voting, and compulsory school attendance). The Venice Commission also noted that the "prudential clause" embodied in the second sentence of Article 2, Protocol No. 1 to the European Convention on Human Rights refers solely to the parents' convictions and does not necessarily imply that the convictions of the pupils themselves are taken into account. This issue could become more involved in the context of secondary education, particularly in cases where students of full age confronted with teaching having a specific religious or philosophical purport differed from their parents in their convictions. To date, the Court has not had to consider this aspect of the right to education.²⁴⁹

248. Viewpoint on 'Religious leaders' posted by the former Commissioner for Human Rights, Thomas Hammarberg.

249. CDL-AD(2004)028 Guidelines for legislative reviews of laws affecting religion or belief, p. 7.

130. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)²⁵⁰ clearly condemns female genital mutilation in its Article 38 by criminalising its performance or any behaviour inciting the procedure or coercing a girl into it.²⁵¹

131. In respect of the circumcision of boys, the Advisory Committee on the Framework Convention for the Protection of National Minorities, for instance, called the authorities of a State Party to maintain their open dialogue with minority representatives on this issue and to ensure that outstanding queries are clarified in conformity with a judgment of the national Supreme Court which held that circumcisions performed in a medically appropriate way and without causing unnecessary pain are not illegal or punishable.²⁵²

B. State relations with religious communities

132. Article 9 of the Convention protects the freedom to manifest religion or belief in community with others. Paragraph 1 makes clear that a “manifestation” of belief may take place “either alone or in community with others” and thus may occur both in the private and public spheres. “Worship” with others may be an obvious form of collective manifestation.

133. To ensure the protection of the right of the individual to collective manifestation of belief within the framework of a religious community, Article 9 should to be read in conjunction with Article 11 of the Convention which provides:

1. Everyone has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

250. Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (CETS No. 210) was adopted by the Committee of Ministers of the Council of Europe on 7 April 2011, opened for signature by the member States of the Council of Europe on 11 May 2011 and entered into force on 1 August 2014. Non-member States and international organisations may also be invited by the Committee of Ministers to become Parties to this instrument. On 1 June 2015 it had been ratified by Albania, Andorra, Austria, Bosnia and Herzegovina, Denmark, Finland, France, Italy, Malta, Monaco, Montenegro, Poland, Portugal, Serbia, Slovenia, Spain, Sweden and Turkey. Belgium, Croatia, Estonia, Georgia, Germany, Greece, Hungary, Iceland, Lithuania, Luxembourg, Netherlands, Norway, Romania, San Marino, Slovakia, Switzerland, “the former Yugoslav Republic of Macedonia”, Ukraine and the United Kingdom have signed it, but not ratified it.

251. See also PACE resolution 1952 (2013) and recommendation 2023 (2013) on the children’s rights to physical integrity and the previous Resolution 1247 (2001) on female genital mutilation.

252. Third Opinion of the Advisory Committee on Finland, adopted on 14 October 2010, §§97-98. See also Resolution CM/ResCMN(2012)3 of 1 February 2012 on the implementation of the Framework Convention for the Protection of National Minorities by Finland.

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.

134. Moreover, the Framework Convention for the Protection of National Minorities states in Article 7:

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

and in Article 8:

Every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

i. Autonomy and rights of religious communities

135. Religious communities traditionally and universally **exist in the form of organised structures**. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.²⁵³

136. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the right of believers to freedom of religion encompasses the expectation that believers will be allowed to associate freely, without arbitrary state intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the

253. *Hasan and Chaush v. Bulgaria* [GC], judgment of 26 October 2000, §62.

very heart of the protection which Article 9 affords.²⁵⁴ It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. "Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable".²⁵⁵

137. Furthermore, States must not interfere in the freedom of religion of the individual members of religious communities on the ground that their association has not been formally registered. To admit the contrary would amount to the exclusion of minority religious beliefs which are not registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe.²⁵⁶

138. Similarly, the Venice Commission has also noted with regard to the autonomy of religious communities that state permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization.²⁵⁷ Hence, it strongly recommended specifying the status of religious entities which do not want to register in a non-discriminatory way as required by international standards.²⁵⁸

139. As to the scope of the autonomous rights, the Venice Commission has stressed that religious communities must enjoy autonomy and self-determination on any matters regarding issues of faith, belief or their internal organization as a group.²⁵⁹ The State must respect the autonomy of religious or belief communities. States should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its

254. *Metropolitan Church of Bessarabia and Others v. Moldova*, judgment of 13 December 2001, §118; *Hasan and Chaush v. Bulgaria*, §62; *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16 December 2004, §73; *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, judgment of 22 January 2009, §103; *Sindicatul Păstorul Cel Bun v. Romania* [GC], judgment of 9 July 2013, §136.

255. *Hasan and Chaush v. Bulgaria*, §62; *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §103.

256. *Masaev v. Moldova*, judgment of 12 May 2009, §26.

257. CDL-AD(20014)023 Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014), §10.

258. CDL-AD(2007)005 Opinion on the draft Law on the Legal Status of a Church, a Religious Community and a Religious Group of "the Former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), §§35-38.

259. CDL-AD(2012)022, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR, §72.

leadership, its internal rules, the substantive content of its beliefs, the structure of the community and methods of appointment of the clergy and its name and other symbols.²⁶⁰

140. For domestic law to meet the above requirements it must afford a measure of **legal protection against arbitrary interferences** by public authorities with the rights safeguarded by the Convention. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed.²⁶¹

141. Except for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.²⁶² Also, any State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would constitute an interference with freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership.²⁶³

142. Intervening in internal disputes between groups of adherents may in some exceptional cases be considered as pursuing the legitimate aim of preventing disorder and protecting the rights and freedoms of others. However, although a certain amount of regulation may be necessary in order to protect individuals' interests and beliefs, state authorities must take care to discharge their duty of neutrality and impartiality as the autonomy of religious communities constitutes an essential component of pluralist democratic society where several religions or denominations of the same religion co-exist.²⁶⁴

260. CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and OSCE/ODIHR, §31.

261. *Hasan and Chaush v. Bulgaria*, §§ 84-85. The relevant law did not provide for any substantive criteria on the basis of which the Council of Ministers and the Directorate of Religious Denominations register religious denominations and changes of their leadership in a situation of internal divisions and conflicting claims for legitimacy. Moreover, there were no procedural safeguards, such as adversarial proceedings before an independent body, against arbitrary exercise of the discretion left to the executive.

262. *Hasan and Chaush v. Bulgaria*, §§77-78; *Mirolubovs and Others v. Latvia*, judgment 15 September 2009, §89.

263. *Serif v. Greece*, judgment of 14 December 1999, §52; *Supreme Holy Council of the Muslim Community v. Bulgaria*, §76.

264. *Mirolubovs and Others v. Latvia*, §§86-87.

143. The autonomy of religious communities is manifested in the state recognition of the decisions of ecclesiastical bodies. In the case of *Pellegrini v. Italy* the Court was, however, called upon to consider issues arising from the civil enforcement of decisions of religious bodies concerning application of Article 6's guarantee of fair hearings. The Court held that national courts have, before authorising enforcement of a decision, a duty to satisfy themselves that the relevant proceedings before a religious authority fulfil the guarantees of Article 6. A review of that kind is required where a decision in respect of which enforcement is requested emanates from the courts of a country which does not apply the Convention, and it is especially necessary where the implications of a declaration of enforceability are of capital importance for the parties.²⁶⁵

144. The autonomous existence for a religious community is also emphasised by the ability to establish a legal entity in order to act collectively in a field of mutual interest and exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention.²⁶⁶ A refusal to recognise legal-entity status has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention.²⁶⁷

145. As the Venice Commission has noted in respect of privileges and benefits of religious/belief organisations, in general, out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief; at a minimum, access to the basic rights associated with legal personality – for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued should be available without excessive difficulty. In many legal systems, there are a variety of additional legal issues that have substantial impact on religious life that are often linked to acquiring legal personality – for example, obtaining land use or other governmental permits, inviting foreign religious leaders, workers and volunteers into a country, arranging visits and ministries in hospitals, prisons and the military, eligibility to establish educational institutions (whether for educating children or for training clergy), eligibility to establish separate religiously motivated charitable organisations, and so forth. In many countries, a variety of financial benefits, ranging from tax exempt status to direct subsidies may be available for certain types of religious entity. In general, the mere

265. Judgment of 20 July 2001, §§40–48.

266. *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §72; *Supreme Holy Council of the Muslim Community v. Bulgaria*, §74.

267. *Metropolitan Church of Bessarabia and Others v. Moldova*, §105. *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, judgment of 8 April 2014, §78.

making any of the foregoing benefits or privileges available does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated.²⁶⁸

146. One of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 must be seen not only in the light of Article 11, but also in the light of Article 6 of the Convention.²⁶⁹

147. To establish "victim" status within the meaning of Article 34 of the Convention and satisfy admissibility criteria,²⁷⁰ a religious community may be recognised as having the **right to challenge an interference** with respect for religious belief when it can show it is bringing a challenge **in a representative capacity** on behalf of its members.²⁷¹ However, recognition of representative status will not extend to a commercial body.²⁷² Further, the recognition of representative status in respect of an association of members appears only to extend to religious belief and not to allegations of interference with thought or conscience.²⁷³

148. Where the individual and collective aspects of Article 9 may conflict, the **collective manifestation of belief** prevails. This is due to the fact that "a church is an organised religious community based on identical or at least substantially similar views",²⁷⁴ and thus the religious organisation "itself is protected in its rights to manifest its religion, to organise and carry out worship, teaching, practice and observance, and it is free to act out and enforce uniformity in these matters".²⁷⁵ In consequence, it will be difficult for a member of the clergy to maintain that he or she has the right to manifest an own individual belief in a manner contrary to the standard practice of his or her church.²⁷⁶ Concerning more specifically the internal autonomy of religious groups, Article 9 of the Convention does not

268. CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp. 11-12.

269. CDL-AD(2005)037, Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania, §23.

270. *Metropolitan Church of Bessarabia and Others v. Moldova*, §101; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, judgment of 31 July 2008, §79.

271. *X and Church of Scientology v. Sweden*, decision of 5 May 1979; *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §31.

272. *Kustannus OY, Vapaa ajattelija AB and Others v. Finland*, decision of 15 April 1996.

273. *Verein "Kontakt-Information-Therapie" and Hagen v. Austria*, decision of 12 October 1988.

274. *X v. Denmark*, decision of 8 March 1976.

275. *Ibid.*

276. *X v. the United Kingdom*, decision of 12 March 1981; *Knudsen v. Norway*, decision of 8 March 1985.

enshrine a right of dissent within a religious community.²⁷⁷ In the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual's freedom of religion is exercised through his or her freedom to leave the community.²⁷⁸ On the other hand, in line with the principle of religious autonomy, religious community cannot be obliged by the State to admit new members or to exclude existing ones²⁷⁹ or to entrust someone with a particular religious duty.²⁸⁰

149. An important aspect of the autonomy of religious communities manifests itself in the area of employment law. This is the **freedom to choose employees** according to criteria specific to the religious community in question. The Court acknowledges that as a consequence of their autonomy religious communities can demand a certain degree of loyalty from those working for them or representing them. In this context the Court has already considered that the nature of the post occupied by those persons is an important element to be taken into account when assessing the proportionality of a restrictive measure taken by the State or the religious organisation concerned. In particular, the specific mission assigned to the person concerned in a religious organisation is a relevant consideration in determining whether that person should be subject to a heightened duty of loyalty.²⁸¹ For instance, in the Court's view, it is not unreasonable for a church or religious community to expect particular loyalty of religious education teachers in so far as they may be regarded as its representatives. The existence of a discrepancy between the ideas that have to be taught and the teacher's personal beliefs may raise an issue of credibility if the teacher actively and publicly campaigns against the ideas in question.²⁸²

277. *Fernández Martínez v. Spain* [GC], judgment of 12 June 2014, §128.

278. *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §137; *Karlsson v. Sweden*, decision of 8 September 1988; *Spetz and Others v. Sweden*, decision of 12 October 1994; *Williamson v. the United Kingdom*, decision of 17 May 1995. In any event, the action complained of must involve exercise of state authority rather than action taken by an ecclesiastical body. Thus where a dispute relates to a matter such as use of the liturgy, state responsibility will not be engaged as this involves a challenge to a matter of internal church administration taken by a body that is not a governmental agency, *Finska församlingen i Stockholm and Teuvo Hautaniemi v. Sweden*, decision of 11 April 1996. This is so even where the religious body involved is recognised by domestic law as enjoying the particular status of an established church. *X v. Denmark*, decision of 8 March 1976.

279. *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §146.

280. *Fernández Martínez v. Spain*, §129.

281. *Fernández Martínez v. Spain*, cited above, §131.

282. *Fernández Martínez v. Spain*, cited above, §137. In that judgment the Grand Chamber found that the Spanish courts had sufficiently taken into account all the relevant factors and had weighed up the competing interests in a detailed and comprehensive manner, within the limits imposed by the respect that was due to the autonomy of the Catholic Church. Consequently, it found no violation of Article 8 of the Convention in that case.

150. The freedom to choose employees is however not absolute as the case-law of the Court shows in two judgments of 23 September 2010 both concerning the dismissal by the employing churches on grounds of adultery. The Court held that where questions concerning the relationship between State and religions are at stake, questions on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance²⁸³ and the task of the Court in these cases was thus to ascertain whether the national employment tribunals had struck a fair balance between the applicants' right under Article 8 and the churches' right under Articles 9 and 11.²⁸⁴

151. In the case of *Sindicatul "Păstorul cel Bun" v. Romania*,²⁸⁵ the Court applied the principle of **autonomy of religious organisations in the context of trade-union rights**. The applicants, who were Orthodox priests and lay employees of the Romanian Orthodox Church, alleged that the refusal of the State authorities to register their trade union impaired the very essence of their freedom of association under Article 11.

161. [...] the Archdiocese, which was opposed to its recognition, maintained that the aims set out in the union's constitution were incompatible with the duties accepted by priests by virtue of their ministry and their undertaking towards the archbishop. It asserted that the emergence within the structure of the Church of a new body of this kind would seriously imperil the freedom of religious denominations to organise themselves in accordance with their own traditions, and that the establishment of the trade union would therefore be likely to undermine the Church's traditional hierarchical structure; for these reasons, it argued that it was necessary to limit the trade-union freedom claimed by the applicant union.

283. *Obst v. Germany*, §44; *Schüth v. Germany*, §58.

284. In *Obst v. Germany* the Court considered that, having regard to the margin of appreciation of the State in the present case, there had been no violation of Article 8.

50. [...] the applicant, having grown up within the Mormon Church, was – or ought to have been – aware when signing his employment contract, and particularly paragraph 10 (concerning adherence to "high moral principles"), of the importance of marital fidelity for his employer [...] and of the incompatibility of the extra-conjugal relations that he had chosen to form with the heightened duties of loyalty that he had contracted towards the Mormon Church as European Director of the Public Relations Department.

However, in *Schüth v. Germany*, the Court came to a different conclusion:

69. [...] Whilst it is true that, under the Convention, an employer whose ethos is based on religion or on a philosophical belief may impose specific duties of loyalty on its employees, a decision to dismiss based on a breach of such duty cannot be subjected, on the basis of the employer's right of autonomy, only to a limited judicial scrutiny exercised by the relevant domestic employment tribunal without having regard to the nature of the post in question and without properly balancing the interests involved in accordance with the principle of proportionality.

285. Judgment [GC] of 9 July 2013.

152. The Grand Chamber took the view that the domestic court's decision had simply applied the principle of the autonomy of religious communities. The court's refusal to register the union for failure to comply with the requirement of obtaining the archbishop's permission was a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its own Statute. The Court held that in refusing to register the applicant union, the State had simply declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of denominational neutrality under Article 9 of the Convention.²⁸⁶ Having regard to the various arguments put forward before the domestic courts by the representatives of the Romanian Orthodox Church, the Court considered that there had therefore been no violation of Article 11 of the Convention.

153. With regard to the prohibition in some member States of the existence of political parties on ethnic, racial or religious lines, the Advisory Committee of the Framework Convention of National Minorities urged, for instance, the authorities of a State Party to remove all the existing obstacles preventing the interested groups from exercising their right to peaceful assembly and association, guaranteed by the Framework Convention.²⁸⁷

154. The Advisory Committee has also encouraged the authorities of a State Party to ensure that the relevant provisions of the law are interpreted so that religious associations can write their names in an alphabet of their choice except in cases where it is necessary, for a legitimate purpose, to require also the use of the Latin script.²⁸⁸

155. The Venice Commission notes that autonomy issues are particularly likely to arise in contexts where religious or belief organisations are engaged in activities such as operating hospitals, schools, or businesses and where individuals assert that the organisations discriminate (on grounds such as gender or membership in the religion). Although differential treatment may be permissible, it is appropriate to draw attention to the competing values of religious autonomy for institutions and the right of citizens to be free from discrimination on the grounds of religion – particularly when the employers receive public financing or tax deductions for their activities.²⁸⁹

286. *Sindicatul "Păstorul cel Bun" v. Romania* [GC], judgment of 9 July 2013, §§166 and 168.

287. Second Opinion of the Advisory Committee on Bulgaria, adopted on 18 March 2010, §130; Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §140.

288. Third Opinion of the Advisory Committee on Estonia, adopted on 1 April 2011, §§86-88.

289. CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, II.D.

ii. Registration and recognition

156. As mentioned above the right of religious communities to legal personality status is vital to the full realisation of the right to freedom of religion and belief. A number of key aspects of organised community life in this area would become impossible or extremely difficult without access to legal personality.²⁹⁰

157. The Venice Commission stressed in its Joint Guidelines on the Legal Personality of Religious or Belief Communities that regardless of the system used to govern access to legal personality, and the particular terms which may be used to describe the forms of legal personality open to religious or belief communities, national law in this area must comply with international human rights instruments.²⁹¹ This means, amongst others, that religious or belief organisations must be able to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities.²⁹²

158. A system of state registration for religious communities to obtain recognition as a legal entity is thus not in itself incompatible with freedom of thought, conscience and religion.²⁹³ States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention

290. CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and OSCE/ODIHR, §20.

291. *Ibid.*, §23.

292. *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §123. See also European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124) and Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe.

293. *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, judgment of 8 April 2014, §76; *Masaev v. Moldova*, §26.

institutions.²⁹⁴ The State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition.²⁹⁵ To this end, the involvement in this procedure of another ecclesiastical authority which itself enjoys state recognition will not be appropriate.²⁹⁶

159. The Venice Commission noted that legislation should not make obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members. States should ensure that they take into account the needs of smaller religious and belief communities, and should be aware of the fact that high minimum number provisions make the operational activities of newly established religious communities unnecessarily difficult.²⁹⁷

160. The process for registration must guard against unfettered discretion and avoid arbitrary decision-making.²⁹⁸ A State must always take care when it appears to be assessing the comparative legitimacy of different beliefs.²⁹⁹

294. *Sidiropoulos and Others v. Greece*, §40.

295. *Metropolitan Church of Bessarabia and Others v. Moldova*, §125 (absence of any evidence as the respondent government had submitted that the church was engaged in political activities contrary to Moldovan public policy or to its own stated religious aims, or that state recognition might constitute a danger to national security and territorial integrity); *Jehovah's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §160 (no appropriate factual basis for the allegations by the authorities that the religious organisation had forced families to break up, that it had incited its followers to commit suicide or to refuse medical care, that it had impinged on the rights of members, parents who were not Jehovah's Witnesses and their children, and that it had encouraged members to refuse to fulfil legal duties. Indeed limitations imposed on members had not differed fundamentally from similar limitations on adherents' private lives imposed by other religions. In any event, encouragement to abstain from blood transfusions even in life-threatening situations could not warrant the refusal to reregister the association and its subsequent dissolution since domestic law granted patients the freedom of choice of medical treatment); *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, §§84, 115 (removing the applicants' churchers status altogether rather than applying less stringent measures in establishing a politically tainted re-registration procedure whose justification was open to doubt, and treating some churches differently from others who were automatically considered incorporated and thus entitled to continue enjoying certain advantages from the State, was considered neglecting the State's duty of neutrality).

296. *Manoussakis v. Greece*, judgment of 26 September 1996, §§47, 50-51; *Vergos v. Greece*, judgment of 24 June 2004, §34; Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, II.F (1).

297. Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, §27.

298. *Supreme Holy Council of the Muslim Community v. Bulgaria*, §33.

299. *Hasan and Chaush v. Bulgaria*, §78.

161. Where official recognition is necessary, mere state tolerance of a religious community is unlikely to suffice.³⁰⁰ The risk with such requirements is that these may be applied in a discriminatory manner with a view to restricting the spread of minority faiths.³⁰¹ The interplay between Article 9's guarantees for the collective manifestation of belief and Article 11's protection for freedom of association, taken along with the prohibition of discrimination in the enjoyment of Convention guarantees as provided for by Article 14, is thus of considerable significance in resolving questions concerning refusal to confer official recognition.

162. In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to allow religious communities to be registered as a religious organisation, and to establish and maintain meeting places and places of worship, regardless of the number of believers and without any undue administrative burden.³⁰²

163. The conclusion of special agreements between the State and certain religious communities establishing a special regime in favour of the latter communities does not in itself contravene Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.³⁰³ A difference in treatment between religious communities which results in granting a specific status in law – to which substantial privileges are attached, while refusing this preferential treatment to other religious or belief communities

300. *Metropolitan Church of Bessarabia and Others v. Moldova*, §129.

301. In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, the Court found a violation of Article 9 on account, among other things, of a ten-year waiting period imposed on "new" religious communities that already had legal personality before they could acquire the status of a "religious society" (*Religionsgesellschaft*) offering a number of substantive privileges. The Court held that it: 98. [...] could accept that such a period might be necessary in exceptional circumstances such as would be in the case of newly established and unknown religious groups. But it hardly appears justified in respect of religious groups with a long-standing existence internationally which are also long established in the country and therefore familiar to the competent authorities, as is the case with the Jehovah's Witnesses. In respect of such a religious group, the authorities should be able to verify whether it fulfils the requirements of the relevant legislation within a considerably shorter period. Further, the example of another religious community cited by the applicants shows that the Austrian State did not consider the application on an equal basis of such a waiting period to be an essential instrument for pursuing its policy in that field.

302. PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §6.8.

303. *Savez crkava "Riječ života" and Others v. Croatia*, judgment of 9 December 2010, §§85-86, 88 (Government's refusal to conclude an agreement which would allow the applicant churches to perform certain religious services and obtain official state recognition of the religious weddings celebrated by their clergymen already available for other churches); *Koppi v. Austria*, judgment of 10 December 2009, §33.

which have not acceded to this status – is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the State sets up a framework for conferring legal personality on religious groups to which a specific status is linked. All religious communities that wish to do so should have a fair opportunity to apply for this status and the criteria established should be applied in a non-discriminatory manner.³⁰⁴

164. The fact that a religion is recognised as a state religion or that it is established as an official or traditional religion or that its followers comprise the majority of the population may be acceptable, provided however that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, and also not in any discrimination against adherents to other religions or non-believers.³⁰⁵

iii. Assessment of religious movements (sects)

165. The requirement of state neutrality does not preclude the authorities from assessing whether the activities of religious bodies or associations may be considered to cause harm or a threat to public order or safety.³⁰⁶ Indeed, in particular cases, public authorities may be under a positive obligation to take action against associations considered harmful to the population.³⁰⁷ In *Leela Forderkreis e.V. and Others v. Germany* adherents of the “Osho movement” alleged that the classification of their religious organisation as a “youth sect”, “youth religion”, “sect” and “psycho-sect” had denigrated their faith and had infringed the State’s duty of neutrality in religious matters. While the Court was prepared to proceed upon the assumption that such labelling had involved an “interference” with Article 9 rights as “the terms used to describe the applicant associations’ movement may have had negative consequences for them”, it nevertheless held that no violation of the guarantee had taken place:

100. An examination of the Government’s activity in dispute establishes further that it in no way amounted to a prohibition of the applicant associations’ freedom to manifest their religion or belief. The Court further observes that the Federal Constitutional Court, [...] carefully analysed the impugned statements and prohibited the use of the adjectives “destructive” and “pseudo-religious” and the allegation that members of the movement were manipulated as infringing the principle of religious neutrality. The remaining terms, notably the naming of the applicant associations’ groups as “sects”, “youth sects” or “psycho-sects”, even if

304. *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, §92.

305. CDL-AD(20014)023, Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, §41.

306. *Manoussakis and Others v. Greece*, §40; *Leela Forderkreis e.V. and Others v. Germany*, judgment of 6 November 2008, §93.

307. *Leela Forderkreis e.V. and Others v. Germany*, judgment of 1 March 2010, §99.

they had a pejorative note, were used at the material time quite indiscriminately for any kind of non-mainstream religion. The Court further notes that the Government undisputedly refrained from further using the term “sect” in their information campaign following the recommendation contained in the expert report on “so-called sects and psychocults” [...] Under these circumstances, the Court considers that the Government’s statements [...] at least at the time they were made, did not entail overstepping the bounds of what a democratic State may regard as the public interest.

166. In connection with the official recognition of religious communities, the question of the definition of “religion” may arise. The Court has not found it necessary to give a definite interpretation but considers that it must rely on the position of the domestic authorities in the matter to determine the applicability of Article 9 of the Convention accordingly.³⁰⁸ In the case of *Kimlya and Others v. Russia*³⁰⁹, a Scientology Centre initially registered as a non-religious entity had been dissolved specifically on account of the religious nature of its activities. The use of this ground for the suppression of the centre was sufficient to allow the Court to deem that Article 9 was engaged.³¹⁰

167. Although the Convention institutions do not have competence to define religion, religious beliefs must be interpreted non-restrictively and cannot be limited to the “main” religions. The issue is more delicate regarding minority religions and new religious groups that are sometimes referred to as “sects” at national level.³¹¹ According to the Court’s current

308. *Kimlya and Others v. Russia*, judgment of 1 October 2009, §79.

309. In this case the Court referred to the Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief.

310. *Kimlya and Others v. Russia*, §§80-81.

311. See also PACE Resolution 1178 (1992) on sects and new religious movements, followed by Recommendation 1412 (1999) on illegal activities of sects. In its Resolution 1992 (2014) where member States are called upon “to ensure that no discrimination is allowed on the basis of whether a movement is considered a sect or not, that no distinction is made between traditional religions and non-traditional religious movements, new religious movements or sects when it comes to the application of civil and criminal law, and that each measure which is taken towards non-traditional religious movements, new religious movements or sects is aligned with human rights standards as laid down by the European Convention on Human Rights and other relevant instruments protecting the dignity inherent to all human beings and their equal and inalienable rights”, § 9.

case-law, all religious groups and their members enjoy equal protection under the Convention.³¹² The issue of new religious movements was brought before the Court in the case of *Fédération chrétienne des témoins de Jéhovah de France v. France*.³¹³ The Court observed that the French legislation in question aimed at strengthening preventive and punitive action against sectarian movements infringing human rights and fundamental freedoms. The Court specified that it was not its task to rule on legislation *in abstracto* and that it could not therefore express a view as to the compatibility of the provisions of the French legislation with the Convention. The Court noted however that:

[...] the impugned Law provides for the possibility of dissolving sects, a term which it does not define, but such a measure can be ordered only by the courts and when certain conditions are satisfied, in particular where there have been final convictions of the sect concerned or of those in control of it for one or more of an exhaustively listed set of offences – a situation in which the applicant association should not normally have any reason to fear finding itself. Impugning Parliament’s motives in passing this legislation, when it was concerned to settle a burning social issue, does not amount to proof that the applicant association was likely to run any risk. Moreover, it would be inconsistent for the latter to rely on the fact that it is not a movement that infringes freedoms and at the same time to claim that it is, at least potentially, a victim of the application that may be made of the Law.

168. The Venice Commission noted in its Joint Guidelines on the Legal Personality of Religious or Belief Communities that the terms “religion” and “belief” are to be broadly construed. A starting point for defining the application of freedom of religion or belief must be the self-definition in the field of religion or belief, though of course the authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case. The freedom of religion or

312. “Main” belief systems fall within the scope of the protection, e.g. *ISKCON and 8 Others v. the United Kingdom*, decision of 8 March 1994. Minority variants of “main” belief systems are also covered, e.g. *Cha’are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000. Older faiths such as Druidism also qualify as religion, *Chappell v. the United Kingdom*, decision of 14 July 1987. Religious movements of more recent origin such as Jehovah’s Witnesses are also covered, *Kokkinakis v. Greece*, judgment of 25 May 1993; *Manoussakis and Others v. Greece*, judgment of 26 September 1996, §40. The same is the case for the Moon Sect, *X v. Austria*, decision of 15 October 1981, as well as the Divine Light Zentrum, *Omkarananda and the Divine Light Zentrum v. Switzerland*, decision 19 March 1981. However, whether the Wicca movement involves a “religion” appears to have been left open, and thus where there is a doubt as regards this matter, an applicant may be expected to establish that a particular “religion” indeed does exist, *X v. the United Kingdom*, decision of 4 October 1977.

313. Decision of 6 November 2001.

belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views.³¹⁴

iv. Property (including issues related to places of worship, cemeteries etc.)

169. As essential for exercising the right to manifest one's religion the Court has consistently referred to such fundamental aspects of religious practice as the right to establish places of worship and the rights to own or rent property.³¹⁵ Any interference with such rights is in principle liable to give rise to questions falling within the scope of Article 1 of Protocol No. 1, which guarantees the protection of property.³¹⁶ However deprivation of a religious organisation's material resources will only give rise to Article 9 consideration insofar as they are intended for the celebration of divine worship.³¹⁷ In *Canea Catholic Church v. Greece* a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality was successfully challenged, the Court considering that the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts.³¹⁸

170. Article 9 should also be read in the light of Article 6 and the guarantees of access to fair judicial proceedings to protect the religious community, its members and its assets.³¹⁹ There must thus be a right of access to court in terms of Article 6 of the Convention for the determination of a religious community's civil rights and obligations, in particular property rights.³²⁰

171. State regulation may also involve measures such as the imposition of restrictions to places of worship considered of significance.³²¹ Again, care is needed to ensure that the legitimate considerations which underpin the rationale for such measures are not used for ulterior purposes to favour or to

314. CDL-AD(20014)023, Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, §2.

315. *Jehova's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §102; *Kimlya and Others v. Russia*, §85; *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §40.

316. *Holy Monasteries v. Greece*, judgment of 9 December 1994, §§54-66.

317. *Ibid.*, §§86-87.

318. *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §§40-42.

319. *Metropolitan Church of Bessarabia and Others v. Moldova*, §105.

320. *Ibid.*, § 141; *Canea Catholic Church v. Greece*, §42.

321. E.g. *Chappell v. the United Kingdom*, decision of 14 July 1987, cf. *Logan v. the United Kingdom*, decision of 6 September 1996.

hinder a particular faith.³²² National authorities have the right to take measures designed to determine whether activities undertaken by a religious association are potentially harmful to others, but this does not allow the State to determine the legitimacy of either the beliefs or the means of expressing such beliefs.³²³ Authorisation requirements under the law are consistent with Article 9 of the Convention only in so far as they are intended to verify whether the formal conditions laid down in those enactments are satisfied.³²⁴

172. Planning controls provide another example of measures required in the public interest but which may nevertheless have an undue impact on freedom of religion and belief. Situations in which rigorous (or indeed prohibitive) conditions are imposed on the adherents of particular faiths, however, must be contrasted with those in which an applicant is seeking to modify the outcome of planning decisions taken in an objective and neutral manner. For instance, having regard to a State's margin of appreciation in matters of town and country planning, the public interest should not be made to yield precedence to the need to worship of a single adherent of a religious community when there was a prayer house in a neighbouring town which met the religious community's needs in the region.³²⁵

173. The Venice Commission has noted with regard to land-use and zoning that laws relating to building, remodelling, or use of properties for religious purposes are likely to involve complicated state laws relating to land, property, and historical preservation. It is not uncommon for state officials (at the national, federal, or local level) to use such laws to restrict religious communities from operating religious facilities. The justifications for restrictions may appear to be neutral (such as regulating the flow of traffic, harmony with other buildings or activities, or noise restrictions), but are

322. *Cyprus v. Turkey* [GC], judgment of 10 May 2001, §§241-247 (restrictions on movement including access to places of worship curtailed ability to observe religious beliefs).

323. *Manoussakis and Others v. Greece*, §40. Domestic law had required religious organisations to obtain formal approval for the use of premises for worship. Jehovah's Witnesses had sought unsuccessfully to obtain such permission, and thereafter had been convicted of operating an unauthorised place of worship.

324. *Ibid.*, §47. See also *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, decision of 3 July 1997 and friendly settlement 9 March 1998 (suspension of the association's registration followed by arrests, dispersal of meetings held in public and private locations and confiscation of religious materials); *Institute of French Priests and Others v. Turkey*, friendly settlement of 14 December 2000 (decision by the Turkish courts to register a plot of land belonging to the Institute in the name of state bodies on the ground that the Institute was no longer eligible for treatment as a religious body as it had let part of its property for various sporting activities; friendly settlement secured after a life tenancy in favour of the priests representing the Institute was conferred).

325. *Vergos v. Greece*, §§36-43.

selectively enforced for discriminatory purposes against disfavoured religious groups. It is important that such laws both be drafted neutrally and applied neutrally and with a legitimate purpose.³²⁶

174. Concerning cemeteries the Venice Commission has noted that States have a variety of practices involving the relationship between religion and cemeteries. In some cases the State exercises complete control over the subject, and in others a great deal of responsibility is held by religious institutions. Although there are no clear rules governing the subject, the State should avoid discrimination among religious groups and permit, within reasonable grounds (particularly public health), the right to manifest religion and belief in this phase of the human condition.³²⁷

175. ECRI has, for instance, recommended the authorities of several State Parties to grant permission or remove administrative or other obstacles for Muslim communities to build a sufficient number of mosques in order for them to exercise their right to manifest their religion in worship³²⁸ and to ensure that Muslim communities have cemeteries.³²⁹

176. The Advisory Committee of the Framework Convention of National Minorities has, for instance, invited the authorities of a State Party to take further steps to ensure that persons belonging to minorities and practising Islam have adequate access to places of worship, especially in places where they live in substantial numbers, and to take decisions on the building or allocation of new places of worship in close and timely consultation with the representatives of the groups concerned.³³⁰ It also invited the authorities to

326. CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, III.

327. *Ibid.*

328. ECRI Report on the Russian Federation in the fourth monitoring cycle, adopted on 20 June 2013, §§130-131; ECRI Report on Andorra, in the fourth monitoring cycle adopted on 21 March 2012, §99; ECRI Report on Denmark in the fourth monitoring cycle, adopted on 23 March 2012, §94; ECRI Report on Iceland in the fourth monitoring cycle, adopted on 6 December 2011, §108; ECRI Report on Luxembourg in the fourth monitoring cycle, adopted on 8 December 2011, §93; ECRI Report on Ukraine in the fourth monitoring cycle, adopted on 8 December 2011, §99; ECRI Report on Greece in the fourth monitoring cycle, adopted on 2 April 2009, §110; ECRI Report on Belgium, in the fifth monitoring cycle, adopted on 4 December 2013, §114.

329. ECRI Report on Denmark in the fourth monitoring cycle, adopted on 23 March 2012, §94; ECRI Report on Luxembourg in the fourth monitoring cycle, adopted on 8 December 2011, §93.

330. Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §153; Third Opinion of the Advisory Committee on Spain, adopted on 22 March 2012, §§75-76.

ensure that the process of restitution of properties to religious communities is carried out in a non-discriminatory manner and to grant fair and equitable compensation.³³¹

177. As regards disputes over religious property, the Venice Commission has indicated that there are two classic religious-property disputes. The first is where the ownership of religious property is disputed as a result of a prior state action that seized the property and transferred it to another group or to individuals. This has been particularly problematic in many cases in formerly communist countries. The second case is where a dispute within a religious community leads to one or more groups contesting ownership rights. Both types of disputes, as well as other related issues, often involve historical and theological questions. Such disputes can be very complicated and demand expertise not only on strictly legal issues involving property, but also on technical questions of fact and doctrine. To the extent that laws deal with such issues, it is important that they be drafted and applied as neutrally as possible and without giving undue preferential treatment to favoured groups.³³²

v. Financing and taxation

178. The State should not take measures which impede the normal functioning of a religious community. Accordingly, an exorbitant tax assessment which seriously disrupts the internal organisation and functioning of the association of a community, preventing it from carrying on its religious activity as such, amounts to an interference with the rights under Article 9 of the Convention and may constitute a violation if the Court finds it disproportionate.³³³

179. Regarding the sources of financing of religious and belief organisations, the Venice Commission has listed the following possible arrangements and the corresponding principles:³³⁴

331. Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §154. Third Opinion of the Advisory Committee on Ukraine, adopted on 22 March 2012, §64, see also Committee of Ministers' Resolution CM/ResCMN(2013)8 on the implementation of the Framework Convention on National Minorities in Ukraine, adopted on 18 December 2013; Third Opinion of the Advisory Committee on Albania, adopted on 23 November 2011, §118; Third Opinion of the Advisory Committee on Romania, adopted on 21 March 2012, §17.

332. CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, III.D.

333. *Association Les Témoins de Jéhovah v. France*, judgment of 30 June 2011, §53.

334. CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, II.J.

The permissibility of accepting gifts and the ability to solicit funds. There is a variety of state practices with regard to permission to accept gifts and solicit funds. Some States give wide latitude for raising funds while others carefully limit amounts that can be received and how funds can be raised. The principal international guidelines would suggest that although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies. The laws should be established in a non-discriminatory manner.

State financing. Many States provide both direct and indirect financing for religious and belief organisations. In addition to the indirect (but very real) benefits that come from tax exemptions and tax deductions, a variety of funding systems operate, including: paying salaries (or providing social benefits) for clergy; subsidizing religious schools; allowing organisations to use publicly owned buildings for meetings; and donating property to religious organisations. In many cases, State-financing schemes are directly tied to historical events, (such as returning property previously seized unilaterally by the State), and any evaluations must be very sensitive to these complicated fact issues.

Tax exemption. It is very common, though not universal, for the State to provide tax benefits to non-profit associations. The benefits typically are of two types: first, direct benefits such as exemption from income and property taxes, and second, indirect benefits that allow contributors to receive a reduction in taxes for the contribution. There is little international law regarding these issues, though non-discrimination norms apply.

Tax system for raising funds. Some States allow religions to raise funds through the State tax system. For example, a (religious) public law corporation may have an agreement with the State whereby the latter taxes members of the religion and then transfers the proceeds to the religion. The two difficulties that frequently arise in such systems are first, whether such arrangements are discriminatory among religion and belief groups, and second, whether individuals who do not wish to have taxes taken from them for the religion to which they belong may opt-out. While international law does not prohibit such taxing systems per se, individuals presumably should be able to opt-out of the taxing system (though the opt-out might entail loss of membership in the religion).

180. On the other hand, domestic law may not impose an obligation to support a church or a religious organisation by means of taxation without recognising the right of the individual to leave the church and thus obtain an exception from the requirement. Article 9 confers protection from compulsion of the individual to become indirectly involved in religious activities against his or her own will in respect of a requirement to pay a church tax. States must respect the religious convictions of those who do not belong to any church, and thus must make it possible for such individuals to be exempted from the

obligation to make contributions to the church for its religious activities.³³⁵ However, this principle does not extend to general legal obligations falling exclusively in the public sphere, and thus taxpayers may not demand that their payments are not allocated to particular purposes.³³⁶

181. The Advisory Committee of the Framework Convention of National Minorities has urged the authorities of a State Party to continue ensuring that the system of funding the National Church does not interfere with the freedom of conscience and religion of persons who do not belong to this church.³³⁷

C. Protection of individuals on account of their thought, conscience and religion

i. Issues in relation to Articles 2 and 3 of the European Convention on Human Rights

182. Article 2 protecting the right to life and Article 3 prohibiting torture or inhuman or degrading treatment or punishment are regarded by the Court as provisions of fundamental importance in the Convention. States are thus under an obligation to protect individuals from attacks or from ill-treatment on account of their thought, conscience and religion.³³⁸ In such cases States will need to show that their national authorities have carried out effective investigations into the incidents in question capable of meeting the requirements of the rights enshrined in these articles.³³⁹

183. The Court has pointed out that, as in cases of racially motivated ill-treatment, when investigating violent attacks the state authorities have the additional duty to take all reasonable steps to unmask any religious motives and to establish whether or not religious hatred or prejudice might have played

335. *Gottesmann v. Switzerland*, decision of December 1984; *Darby v. Sweden*, judgment of 23 October 1990; *Bruno v. Sweden*, decision of 28 August 2001 (distinction between taxation for functions purely associated with religious belief, and the discharge of public functions [the “dissenter tax”] e.g. for the administration of burials, the maintenance of church property and buildings of historic value, and the care of old population records).

336. Regarding the question of the non-discrimination between religious communities – see also *Ásatrúarfélagið v. Iceland*, inadmissibility decision of 18 September 2012. The Court saw no cause for calling into question the Icelandic courts’ view that, since the National Church’s tasks and obligations to society could not be compared to those of the applicant association’s, the allocation of additional funding to the former did not constitute discrimination.

337. Third Opinion of the Advisory Committee on Denmark, adopted on 31 March 2011, §74.

338. *Pretty v. the United Kingdom*, judgment of 29 April 2002, §49; *Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*, judgment of 3 May 2007, §95; *Milanović v. Serbia*, judgment of 14 December 2010, §82.

339. *Members of the Gldani Congregation of Jehovah’s Witnesses and Others v. Georgia*, §97; *Milanović v. Serbia*, §§75, 89.

a role in the events, even when the ill-treatment is inflicted by private individuals. Treating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.³⁴⁰ The Court has further held that the refusal of the police to intervene promptly to protect the victims of religious-motivated violence and the subsequent indifference on the part of the relevant authorities, who refused to apply the law in these cases, amounted to a violation of Articles 3 and 9 in conjunction with Article 14.³⁴¹

184. The Court has accepted that compulsory military service for conscientious objectors in some cases may amount to degrading treatment within the meaning of Article 3.³⁴² The expulsion of an alien by a Contracting State may also give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.³⁴³ This is also the case when a person is in risk of religious persecutions in a third country.³⁴⁴

ii. Protection of persons belonging to minority religious groups

185. The protection of persons belonging to minority religious groups has become a matter of ever greater concern in Europe, as a result of its increasingly diverse population, in particular a growing number of religious minorities.

340. *Milanović v. Serbia*, judgment of 14 December 2010, §§96-100 (where it was suspected that the attackers belonged to one or several far-right organisations governed by extremist ideology, the Court found it to be unacceptable to allow the investigation to drag on for many years without taking adequate action with a view to identifying and prosecuting the perpetrators).

341. *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, §§124-125, 133, 140.

342. For example *Ulke v. Turkey*, judgment of 24 January 2006, §§61-62 (inhuman treatment due to constant alternation between prosecutions and terms of imprisonment and the possibility that this situation could theoretically continue for the rest of his life).

343. *Collins and Akaziebie v. Sweden*, decision of 8 March 2007 and *Izevbekhai and Others v. Ireland*, decision of 17 May 2011. While the Court recognised that expulsion of an alien by a Contracting State may give rise to an issue under Article 3, in both these cases the applicants could not prove that they ran a real and concrete risk of female genital mutilation upon expulsion to the receiving country.

344. *M.E. v. France*, judgment of 6 June 2013 (Coptic Christian from Egypt who had fled religious persecution in his home country. Violation of Article 3 if the order deporting the applicant to Egypt were enforced).

186. Whereas the freedom of thought and conscience as well as the freedom to choose a religion or belief are strictly personal freedoms, the right to freedom of religion has not only an individual but also a collective dimension, where the right of the collective body to manifest and practice religion is protected. The collective right to assemble, to practice or manifest religion or beliefs is furthermore protected under Article 11 of the European Convention on Human Rights.³⁴⁵ The Convention does not however contain a specific provision for the protection of minority rights as such. Nevertheless, Article 14 of the Convention and Article 1 of Protocol No. 12³⁴⁶ provide protection against discrimination of persons belonging to religious minorities by explicitly mentioning “religion” and “association with a national minority” as non-admissible grounds for discrimination.³⁴⁷ The Court has, however, produced very limited results under the prohibition of discrimination as concerns the state obligation to take special measures on behalf of minorities to compensate their vulnerable and disadvantaged position.³⁴⁸

187. Since the 1950s the Parliamentary Assembly of the Council of Europe has considered the issue of protecting the rights of groups and individuals belonging to national minorities,³⁴⁹ including those defined by religion or belief. For instance, in its Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, the Parliamentary Assembly called upon member States to ensure that the religious beliefs and traditions of individuals and communities of society are respected, while guaranteeing that a due balance is struck with the rights of others in accordance with the case law of the European Court of Human Rights. It also urged member States to ensure the effective protection of communities and individuals defined by religion or beliefs and of their meeting places and places of worship, including those of minorities. Member States should also promote correct and objective education about religions and non-religious beliefs, including those of minorities; actively support initiatives aimed at promoting the interreligious and intercultural dimension of

345. CDL-AD(2012)022, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR, §68

346. *Sejdić and Finci v. Bosnia and Herzegovina* [GC], judgment of 22 December 2009 (first case in which the Court found a violation of Article 1 of Protocol No. 12).

347. The European Social Charter, in the field of economic and social rights also contains measures aimed to protect against all forms of discrimination. The revised European Social Charter prohibits any discrimination on grounds, for instance, of race, colour, religion, national extraction, or birth (Article E).

348. CDL-AD(2007)001, Report on non-citizens and minority rights, §19.

349. For example, PACE Recommendation 1134 (1990) on the rights of minorities; Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention PACE Resolution 1713 (2010) on “Minority protection in Europe: best practices and deficiencies in implementation of common standards” and Resolution 1985 (2014) on the “Situation and rights of national minorities in Europe”.

dialogue, and should ensure the effective protection of communities and individuals defined by religion or beliefs and of their meeting places and places of worship, including those of minorities.³⁵⁰

188. The Preamble of the Framework Convention for the Protection of National Minorities³⁵¹ specifically acknowledges “that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity”.³⁵² On the basis of a free choice of whether or not to be treated as a person belonging to a national minority, Article 3 of the Framework Convention provides protection to such persons, who may exercise their rights individually and in community with others.³⁵³ In addition to guaranteeing the fundamental principles of non-discrimination and equality, Article 4 provides:

The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

189. Furthermore, State Parties have an obligation in Article 6, paragraph 2, to protect minorities from violence, threats of violence, and acts of discrimination:

The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

190. Although the Framework Convention does not provide a definition of “national minorities” and thus does not specify the group of persons entitled to the protection, Article 5 mentions nevertheless that persons belonging to national minorities can maintain and develop their culture and preserve their

350. PACE Resolution on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, §§9.8 and 11.3–11.5.

351. See also above 1.i and ii.

352. In *Gorzelik and Other v. Poland* [GC], judgment of 17 February 2006, §§92-93, the Court referred to the preamble of the Framework Convention for the Protection of National Minorities.

353. However, unlike the European Convention, there is no procedure that allows for individual complaints as the legal standards described in the Framework Convention are not addressed directly to minority groups. The Framework Convention mostly contains programme-type provisions setting out objectives which the States Parties undertake to achieve, §11 of the Explanatory Report.

identity, including their religion. Respect for the right to freedom of peaceful assembly, freedom of association, freedom of thought, conscience and religion is guaranteed in Article 7,³⁵⁴ and Article 8 further specifies:

[...] every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

191. With regard to the scope of application of the Framework Convention, the Advisory Committee has, for instance, urged the authorities of a State Party to engage in a dialogue with persons belonging to groups interested in the protection offered by the Framework Convention³⁵⁵ and has invited the Government to give due consideration to the claims for recognition under the Framework Convention raised by the representatives of the Muslim community, and possible other groups.³⁵⁶

192. The Council of Europe Commissioner for Human Rights has pointed out that Muslims have become the primary “other” in right-wing populist discourse in Europe. He advised Governments to stop targeting Muslims through legislation or policy, and instead enshrine the ground of religion or belief as a prohibited ground of discrimination in all realms. They should also empower independent equality bodies or ombudsmen to review complaints, provide legal assistance and representation in court, provide policy advice, and conduct research on discrimination against Muslims and other religious groups. Monitoring discrimination against Muslims should involve collecting data disaggregated by ethnicity, religion and gender.³⁵⁷

193. The European Commission against Racism and Intolerance (ECRI)³⁵⁸ has expressed particular concern about the signs of increasing religious intolerance towards Islam and Muslim communities in countries where this religion is not observed by the majority of the population.³⁵⁹ In its General Policy Recommendation No. 5 it calls upon the Governments in member States, where Muslim communities are settled and live in a minority situation, to

354. These fundamental freedoms correspond to Articles 9, 10 and 11 of the European Convention of Human Rights which are of particular relevance for the protection of national minorities.

355. Third Opinion of the Advisory Committee on Bulgaria, adopted on 11 February 2014, §30.

356. Third Opinion of the Advisory Committee on the United Kingdom, adopted on 30 June 2011, §§35-36.

357. Human Rights Comment by Nils Muižnieks “Anti-Muslim prejudice hinders”, published on 24 July 2012.

358. See also 1.ii.

359. See for example the statement by ECRI on the ban of the construction of minarets in Switzerland from 1 December 2009.

ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion.³⁶⁰ Likewise, the ECRI has observed an increase of antisemitism in many European countries and stressed that this increase is also characterised by new manifestations of antisemitism which continues to be promoted, openly or in a coded manner, by some political parties and leaders, including not only extremist parties, but also certain mainstream parties. In its General Policy Recommendation No. 9, ECRI urges the Government of member States to give a high priority to the fight against antisemitism, taking all necessary measures to combat all of its manifestations, regardless of their origin.³⁶¹ In its fourth-cycle reports it has also identified instances of discrimination or intolerance against members of Christian groups in member States, expressing its concerns at the lack of mechanisms to prevent various negative trends (physical assaults, negative publicity in the media, vandalism, attacks on property, damage to religious buildings) as well as States' continued lack of compliance with its specific recommendations (legal registration, property rights, issuance of visas for priests or other clerics).³⁶²

194. The Venice Commission has also pointed out that in a country where there is a marked link between ethnicity and a particular church there is a distinct opportunity for discrimination against other religions. To guard against this possibility there is a particular need to protect pluralism in religion which is an important element of democracy.³⁶³ Certain measures discriminating against the other religions, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based

360. ECRI General Policy Recommendation No.5 on combating intolerance and discrimination against Muslims, adopted on 16 March 2000.

361. ECRI General Policy Recommendation No. 9 on the fight against anti-Semitism, adopted on 25 June 2004.

362. See Report of 4 April 2013 on "Violence against religious communities" by the PACE Committee on Political Affairs and Democracy, §29; Report of 7 January 2015 on "Tackling intolerance and discrimination in Europe with a special focus on Christians", by PACE Committee on Equality and Non-Discrimination. See also "Annual Report on ECRI's activities covering the period from 1 January to 31 December 2010", §16, where ECRI signaled a number of acts targeting members of other religious minorities, including Christians. See for example ECRI Report on the Russian Federation in the fourth monitoring cycle, adopted on 20 June 2013, §141; ECRI Report on Turkey in the fourth monitoring cycle, adopted on 10 December 2010, §137; ECRI Report on Greece in the fourth monitoring cycle, adopted on 12 April 2009, §82; ECRI Report on the Republic of Moldova in the fourth monitoring cycle adopted on 20 June 2013, §§114-119.

363. Venice Commission and OSCE/ODIHR Advisory Council on Freedom of Religion or Belief Joint Opinion on the Law on Making Amendments and Addenda to the Law on the Freedom of Conscience and on Religious Organizations and on the Law on Amending the Criminal Code of the Republic of Armenia, §20.

on religion or belief and the guarantee of equal protection. Thus, such status must not be allowed to repress, discriminate against, or foster hostility toward other religions in maintaining this identity.³⁶⁴

iii. Hate speech and hate crime on grounds of thought, conscience and religion

Hate speech

195. Recommendation No. R 97(20) of the Committee of Ministers to member States on "Hate Speech"³⁶⁵ indicates that the term should be understood as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"³⁶⁶. It thus also covers incitement to hatred on grounds of religion and intolerance.

196. In this Recommendation the Committee of Ministers calls on the Governments of member States to:

1. take appropriate steps to combat hate speech [...]
4. review their domestic legislation and practice in order to ensure that they comply with the principles set out in its appendix to this Recommendation.

197. In the Appendix to the Recommendation, it is stated that the national authorities and officials "have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur."³⁶⁷

198. The Appendix also points out that such form of expression may have a greater and more damaging impact when disseminated through the media. However "national law and practice should distinguish clearly between the responsibility of the author of expressions of hate speech, on the one hand, and

364. CDL-AD (2010)054, Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code, the administrative offences code and the law on charity of the Republic of Armenia, §26.

365. Adopted on 30 October 1997.

366. However, at present no internationally recognised definition of hate speech exists.

367. Principle 1 of the Appendix.

any responsibility of the media and media professionals contributing to their dissemination as part of their mission to communicate information and ideas on matters of public interest on the other hand.”³⁶⁸

199. Specifically with regard to the dissemination of racist and xenophobic propaganda through computer systems, the Additional Protocol to the Convention on Cybercrime³⁶⁹ defines, in Article 2, racist and xenophobic material as “any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors”.

200. According to the Additional Protocol to the Convention on Cybercrime, State Parties shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- distributing, or otherwise making available, racist and xenophobic material to the public through a computer system (Article 3)
- threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics (Article 4)
- insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics (Article 5)
- distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military

368. Principle 6 of the Appendix.

369. The Additional Protocol to the Convention on Cybercrime concerning the prosecution of acts of racist and xenophobic nature through computer systems (ETS No. 189) was adopted on 28 January 2003, opened for signature on 28 January 2003 and entered into force on 1 March 2006. On 1 January 2015 it had been ratified by 23 member States: Albania, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Montenegro, Netherlands, Norway, Portugal, Romania, Serbia, Slovenia, Spain, “the former Yugoslav Republic of Macedonia” and Ukraine. Andorra, Austria, Belgium, Estonia, Greece, Iceland, Italy, Lichtenstein, Malta, Moldova, Poland, Sweden and Switzerland, have signed it, but not ratified it. The following non-member States have signed it, but not ratified it: Canada and South Africa.

Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party (Article 6)

– aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed (Article 7).

201. Freedom of expression is guaranteed in Article 10, paragraph 1, of the European Convention on Human Rights:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...]

202. The Court excludes hate speech from protection under the Convention either by applying the second paragraph of Article 10 on the right to freedom of expression which allows for certain limitations:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

or by applying Article 17 where hate speech is of such nature which negates the fundamental values of the Convention:

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.

203. Although the case-law of the European Court of Human Rights enshrines the overriding and essential nature of the freedom of expression in a democratic society – a freedom applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb³⁷⁰ – it has also laid down the limits to that freedom.³⁷¹ Paragraph 2 of Article 10 expressly recognises that

370. *Handyside v. the United Kingdom*, 7 December 1976, §49; *Lingens v. Austria*, judgment of 8 July 1986, §41.

371. See for example *Garaudy v. France*, decision of 24 June 2003; *Pavel Ivanov v. Russia*, decision of 20 February 2007.

the exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to respect the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs, including a duty to avoid as far as possible an expression that is, in regard to for instance objects of veneration, gratuitously offensive to others and profane.³⁷² The issue before the Court often involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely the right impart to the public controversial views and, by implication, the right of interested persons to take cognisance of such views, on the one hand, and the right of other persons to proper respect for their freedom of thought, conscience and religion, on the other hand³⁷³ (see also above under 2.v.).

204. As a matter of principle, the Court has considered that it may be necessary in certain democratic societies to sanction or even prevent improper attacks on objects of religious veneration³⁷⁴ or all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.³⁷⁵

205. Thus, there can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention.³⁷⁶ It is obvious that hate speech which implies glorification of violence will not be protected.³⁷⁷

206. The Court has reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects.³⁷⁸ Therefore, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.³⁷⁹ Moreover, as in the field of morals, and

372. *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §§46-47, 49.

373. *Otto-Preminger-Institut v. Austria*, §§55-56.

374. *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §49.

375. See for example *Gündüz v. Turkey*, judgment of 4 December 2003, §40; *Erbakan v. Turkey*, judgment of 6 July 2006, §56; *Féret v. Belgium*, judgment of 16 July 2009, §63.

376. See for example *Jersild v. Denmark*, judgment of 23 September 1994, §35; *Gündüz v. Turkey*, §41.

377. See for example *Sürek v. Turkey (No. 1)* [GC], judgment of 8 July 1999, §62. *Ergin v. Turkey (No. 6)*, judgment of 4 May 2006, §34.

378. See among others *Norwood v. the United Kingdom*, decision of 16 November 2004; *Pavel Ivanov v. Russia*, decision of 20 February 2007; *S.A.S. v. France* [GC], judgment of 1 July 2014, §149.

379. See also above 2.vi.

perhaps to an even greater degree, there is no uniform European conception of the requirements of “the protection of the rights of others” in relation to attacks on their religious convictions.³⁸⁰ However, when deciding on whether a restriction is reconcilable with freedom of expression, the Court will look at the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made³⁸¹, but also the form in which they were conveyed³⁸², and the particular medium of expression used.³⁸³ The Court has emphasised the importance of freedom of the press and debate on matters of public interest³⁸⁴ and has recalled that there is little scope for restrictions on political speech.³⁸⁵ Furthermore, the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen or even a politician. However, where such remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation.³⁸⁶ Finally, lack of consistency in the attitude of the State seems to be sufficient for the Court to rule in favour of the applicant.³⁸⁷

380. *Otto-Preminger-Institut v. Austria*, §50; *Murphy v. Ireland*, judgment 10 July 2003, §81; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §58. The Court noted that “what is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever-growing array of faiths and denominations”.

381. *Sürek v. Turkey (No. 1)*, §§58-60 (although the impugned interference had to be seen in the context of the essential role of the press in ensuring the proper functioning of political democracy, the message communicated to the reader was that recourse to violence is a necessary and justified measure of self-defence in the face of the aggressor, therefore no violation of Article 10); *Gündüz v. Turkey*, §§42-43 (the applicant had been invited to take part in a programme designed to encourage an exchange of views or even an argument, in such a way that the opinions expressed would counterbalance each other and the debate would hold the viewers’ attention, therefore a violation of Article 10). See also *Lehideux and Isorni v. France* [GC], judgment of 23 September 1998, §51.

382. *Lehideux and Isorni v. France*, §52.

383. *Murphy v. Ireland*, judgment 10 July 2003, §72.

384. *Giniewski v. France*, judgment of 31 January 2006, §§51-52 (the Court held that the article was part of a view which the applicant wished to express as a journalist and historian, on a matter of indisputable public interest in a democratic society – namely the various possible reasons behind the extermination of the Jews in Europe. It moreover stressed that the applicant’s article was not gratuitously offensive or insulting, and did not incite disrespect or hatred).

385. *Lingens v. Austria*, judgment of 8 July 1986, §42; *Castells v. Spain*, judgment of 23 April 1992, §43; *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, §63; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §58; *Sürek v. Turkey (No. 1)*, §61; *Féret v. Belgium*, §§63 and 65.

386. *Sürek v. Turkey*, §61.

387. *Aydın Tatlav v. Turkey*, judgment of 2 May 2006, §28 (prosecution brought when a book was reprinted for the fifth time although the State had authorised the first four editions.)

207. On an exceptional basis and in extreme cases, the Court has held that speech which is incompatible with the Convention's underlying values should be removed from the protection of Article 10 by virtue of Article 17 of the Convention.³⁸⁸ There is no doubt that the justification of a pro-Nazi policy cannot be allowed to enjoy the protection afforded under Article 10. The Court found that there is a category of clearly established historical facts – such as the Holocaust – whose negation or revision will be removed from the protection of Article 10 by Article 17. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them.³⁸⁹

208. In its Commentary relating to the language rights of persons belonging to national minorities under the Framework Convention, the Advisory Committee has reiterated that criminal legislation should include provisions that expressly provide for discriminatory motivations based on language, culture, ethnicity or religion to be taken into account by courts as an aggravating circumstance for all offences. Hate speech and incitement to any form of hostility based on ethnic, cultural, linguistic or religious identity must be included in criminal law provisions to ensure adequate sanctioning for such offences.³⁹⁰

209. Similarly, ECRI's General Policy Recommendation (GPR) No. 6 on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material via the Internet urges the Governments of member States, to ensure that relevant national legislation applies also to racist, xenophobic and antisemitic offences committed via the Internet and prosecute those responsible for this kind of offences. The member States are also encouraged to undertake sustained efforts for the training of law enforcement authorities in relation to the problem of dissemination of racist, xenophobic and anti-Semitic material via the Internet.

210. In addition, in its GPR No. 7 on "National Legislation to Combat Racism and Racial Discrimination"³⁹¹ ECRI calls upon member States to adopt criminal law provisions combating various racist expressions. Such expressions concern intentional public incitement to violence, hatred or discrimination against a

388. *Pavel Ivanov v. Russia*, decision of 20 February 2007.

389. *Lehideux and Isorni*, §§53, 47. See also *Garaudy v. France*; *Féret v. Belgium*, §§69, 71 (leaflets and posters with the following statements: "Attacks in the USA: the couscous clan", "oppose the Islamization of Belgium", "stop the policy of pseudo-integration", "return the unemployed non-European"). Additionally, some of the leaflets advocated for "the formation of ethnic ghettos". The Court ruled that this form of discourse inevitably generates among the public hatred *vis-à-vis* foreigners.

390. Commentary relating to the language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, §29.

391. Adopted by ECRI on 13 December 2002.

person or a grouping of persons on the ground, *inter alia*, of their religion; intentional public insults and defamation against such a person or grouping; intentional threats against the same target; the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the ground, *inter alia*, of their religion; and the public denial, trivialization, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes.³⁹² Finally, public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim of material containing racist expression such as the above, should also be the object of criminal sanctions.³⁹³ In addition to recommending building capacity (in general, or dedicated capacity in particular),³⁹⁴ ECRI has urged countries to think about innovative ways of enlisting the help of Internet users.³⁹⁵

211. The Parliamentary Assembly has adopted several recommendations and resolutions on the freedom of expression and respect for religious beliefs and protection of religious communities.³⁹⁶ More specifically, in its Recommendation 1805 (2007) on “Blasphemy, religious insults and hate speech against persons on grounds of their religion”, the Assembly reaffirmed the need to penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on religious grounds or otherwise. The Assembly considered that national law and practice should - as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention - penalise expressions about religious matters which intentionally and severely disturb public order and call for a person or a group of persons to be subjected to hatred, discrimination or violence. However, with regard to blasphemy, as an insult to a religion, it considered that it should not be deemed a criminal offence.³⁹⁷

212. Upon the proposal of the Parliamentary Assembly,³⁹⁸ the Venice Commission prepared a report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of

392. §18 a) - e).

393. §18 f).

394. See 4th-round reports on Latvia, §90; Lithuania, §§30 and 83; the Netherlands, §25; and Poland, §103.

395. GPR No. 6; see also 4th-round reports on France, §81 and Lithuania, §§29 and 82.

396. For example Resolution 1510 (2006) on “Freedom of expression and respect for religious beliefs”, adopted on 28 June 2006 and Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, adopted on 24 April 2013.

397. PACE Recommendation 1805 (2007) on “Blasphemy, religious insults and hate speech against persons on grounds of their religion”, §§4 and 17.2.

398. Resolution 1510 (2006) on “Freedom of expression and respect for religious beliefs”, adopted by the Parliamentary Assembly on 28 June 2006, §18.

blasphemy, religious insult and incitement to religious hatred. The Venice Commission expressed the view that “in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme. Ensuring and protecting open public debate should be the primary means of protecting inalienable fundamental values such freedom of expression and religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited”.³⁹⁹ The report concludes:⁴⁰⁰

- a) That incitement to hatred, including religious hatred, should be the object of criminal sanctions [...]
- b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component.
- c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.

As concerns the question of to what extent criminal legislation is adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one’s beliefs, the Venice Commission reiterated that, in its view, criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate).⁴⁰¹ Notwithstanding the difficulties with enforcement of criminal legislation in this area, there is a high symbolic value in the pan-European introduction of criminal sanctions against incitement to hatred. It is essential however that the application of legislation against incitement to hatred be done in a non-discriminatory manner.⁴⁰²

Hate crime

213. The Council of Europe Commissioner for Human Rights has underlined that unfortunately the move from hate speech to hate crime is easily made.⁴⁰³ As measures to prevent and react to cases of hate crime he proposed that:

399. CDL-AD(2008)026, Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, adopted by the Venice Commission at its 76th Plenary session (Venice, 17-18 October 2008), §46.

400. *Ibid.*, §89.

401. *Ibid.*, §90.

402. *Ibid.*, §91.

403. Council of Europe Commissioner for Human Rights, Thomas Hammarberg’s viewpoint on “Hate crime”.

- governments should establish co-operative relations with minority communities and invite proposals on measures to be taken place;
- anti-discrimination bodies should be established with a broad mandate and the authority to address hate violence through monitoring, reporting and assistance to victims;
- steps should be taken to monitor and collect data on bias-motivated crimes and the circumstances giving rise to them;
- access to complaints procedures needs to be improved for individual victims and for groups acting on their behalf;
- the judicial response to hate crime must be severe;
- existing hate-crime laws must be enforced in order to increase their deterrent effect. The procedures should be well documented and made public.

214. The Commissioner for Human Rights further stated that the political presence of racist extremist political parties in national parliaments and governments lends legitimacy and credibility to political extremism that is often linked to racist and other hate crimes.⁴⁰⁴ He has furthermore stated with regard to anti-Semitism that national political leaders should vigorously condemn antisemitic speech and attacks when they occur, sending a clear signal that such hatred is unacceptable and will be resolutely punished. Finally, he said that in light of new technological developments, States should address the growing concerns posed by online antisemitism and check that they have effectively implemented the Committee of Ministers' Recommendation No. R (97) 20 on "hate speech".⁴⁰⁵

215. In reaction to an increase in acts of vandalism and desecration in many Council of Europe member States, in 2010 the Council of Europe Commissioner for Human Rights qualified these acts as hate crimes and pointed out that they were "urgent human rights issues".⁴⁰⁶

404. Human Rights comment by Commissioner Nils Muižnieks, "Europe must combat racist extremism and uphold human rights" posted on 13 May 2013.

405. Human Rights Comment by Commissioner Nils Muižnieks "Europe still haunted by antisemitism" posted on 23 January 2014.

406. Thomas Hammarberg, "Desecrations of cemeteries are hate crimes that exacerbate intolerance", 30 November 2010.

216. The European Commission against Racism and Intolerance (ECRI) also reported attacks on individuals motivated on religious grounds⁴⁰⁷ as well as against religious sites and property⁴⁰⁸. ECRI expressed concern at incidents, in which individual were targeted and subjected to violent racist attacks because they belong to minority groups well as at reports that in some cases attacks against religious sites and property tended to be minimised by the authorities and stressed the need to address such issues squarely by condemning racist attacks whenever they occur and carrying out adequate investigations into every such case.

217. Furthermore the Parliamentary Assembly expressed concern about the increase in violent attacks against religious communities throughout the world, which are not only physical, but also psychological violence against persons because of their religion or beliefs.⁴⁰⁹ For example, in its Resolution 1892 (2012) on the “Crisis of transition to democracy in Egypt”, the Assembly deplored the situation of Christian communities in the country and that violence continued to be perpetrated against these communities, as well as against other religious minorities, calling on member States to implement the measures listed in its Recommendation 1957 (2011) on “Violence against Christians in the Middle East”.⁴¹⁰ In Resolution 2016 (2014) and Recommendation 2055 (2014) the Parliamentary Assembly expressed concern about the violence against Christians and other religious or ethnic communities used by the terrorist group known as “IS” which poses threats against humanity.⁴¹¹

218. In its Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, the Parliamentary Assembly urged all States in which violence against communities and individuals defined by religion or beliefs has occurred to unequivocally condemn not only attacks on innocent people, but also the use of violence in general, as well as all forms of discrimination and intolerance, including hate speech, based on religion and beliefs. It also urged them to pursue and reinforce their efforts to combat and prevent such cases and bring

407. For example, ECRI report on Turkey in the fourth monitoring cycle, adopted on 10 December 2010, §§137-138.

408. For example ECRI report on Bosnia and Herzegovina in the fourth monitoring cycle, adopted on 7 December 2010, §56; ECRI report on Poland in the fourth monitoring cycle, adopted on 28 April 2010, §§114-115; ECRI report on “the former Yugoslav Republic of Macedonia” in the fourth monitoring cycle, adopted on 28 April 2010, §100.

409. PACE Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, §1.

410. PACE Resolution 1892 (2012) on the “Crisis of transition to democracy in Egypt”, §11.

411. PACE Resolution 2016 (2014) and Recommendation 2055 (2014) on “Threats against humanity posed by the terrorist group known as “IS”: violence against Christians and other religious or ethnic communities”.

to justice the perpetrators. The Assembly also called upon member States to respect and protect the cultural heritage of the various religions. It further called on all religious leaders in Europe to condemn attacks on religious communities and other faith groups, and to accept the principle of equal respect for all human beings regardless of their religion.

219. Moreover, in its Resolution 1928 (2013) the Parliamentary Assembly encouraged the member States, *inter alia*, to ensure that religion can never be invoked to justify violence against women and girls, such as honour killings, bride burning or forced marriages, and female genital mutilation, even by members of their own religious communities.⁴¹²

220. In its Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, the Parliamentary Assembly called on States to combat and prevent cases of violence, discrimination and intolerance, in particular by carrying out effective investigations in order to avoid any sense of impunity among the perpetrators.⁴¹³

iv. Matters relating to international protection on grounds of thought, conscience and religion

221. As already stated above,⁴¹⁴ if there are substantial grounds to believe that a person, if deported would face a real risk of being subjected to treatment contrary to Articles 2 or 3 of the Convention, for instance in view of religious persecution, the expulsion of this person to a third country may give rise to an issue under these provisions and hence engage the responsibility of the State in question under the Convention.⁴¹⁵

222. On the other hand, the protection afforded by Article 9 is first and foremost a matter for European States to ensure within their jurisdictions, and accordingly very limited assistance can be derived from the provision itself when an individual is under threat of expulsion to another country where it is

412. Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, §§9.6, 11 and 12.

413. PACE Resolution 2036 (2015) on “Tackling intolerance and discrimination in Europe with a special focus on Christians”, §6.6.

414. See above under 3.C.i

415. *M.E. v. France*, judgment of 6 June 2013 (Coptic Christian from Egypt who had fled religious persecution in his home country. Violation of Article 3 if the order deporting the applicant to Egypt were to be enforced); *Collins and Akaziebie v. Sweden*, decision of 8 March 2007; *Izevbekhai and Others v. Ireland*, decision of 17 May 2011. See also *Z.N.S. v. Turkey*, judgment of 19 January 2010, §50: The Court found that there were substantial grounds for accepting that the applicant risked a violation of her rights under Article 3, on account of her religion if returned to Iran. See also *F.G. v. Sweden*, referral to the Grand Chamber with hearing on 3 December 2014, the GC judgment pending.

claimed there is a real risk that freedom of religion would be denied if returned or expelled.⁴¹⁶ With the exception of Articles 2 and 3 of the Convention, under which the responsibility of a Contracting State may be engaged, indirectly, through placing an individual at a real risk of a violation of his or her rights in a country outside their jurisdiction (see above 3.C.i), such compelling considerations do not automatically apply in respect of other provisions of the Convention.⁴¹⁷ The Court has emphasised that it cannot be required that an expelling Contracting State only return an alien to a country where the conditions are in full and effective accord with each of the safeguards of the rights and freedoms set out in the Convention.⁴¹⁸ As a result, protection is offered to those who have a substantiated claim that they will either suffer persecution for, for instance, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason). While the Court has not ruled out the possibility that exceptionally Article 9 may be engaged in expulsion cases, it has stated that it considers it difficult to envisage such circumstances which in any event would not engage Article 3 responsibility.⁴¹⁹

223. On the other hand, while immigration control is normally a matter falling outside the scope of the Convention guarantees, the refusal to allow a resident alien to enter a country on account of his religious beliefs may give rise to issues under Article 9 in particular cases.⁴²⁰

224. The Parliamentary Assembly of the Council of Europe called, in its Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”,

416. *Z and T v. the United Kingdom*, decision of 28 February 2006 (Pakistani Christians facing deportation to Pakistan could not show that they were personally at such risk or were members of such a vulnerable or threatened group or in such a precarious position as Christians as might disclose any appearance of a flagrant violation of Article 9 of the Convention. See also *Al-Nashif and Others v. Bulgaria*, judgment of 20 June 2002 (deportation on account of having taught Islamic religion without proper authorisation: in view of finding that deportation would constitute a violation of Article 8, no need to consider Article 9).

417. *Z and T v. the United Kingdom*.

418. *Idem*.

419. *Idem*.

420. *Nolan and K v. Russia*, judgment of 12 February 2009, §§61-75 (exclusion of resident alien on account of activities as a member of the Unification Church: violation). See also *Perry v. Latvia*, judgment of 8 November 2007, §§51-66 (refusal to issue an Evangelical pastor with a permanent residence permit for religious activities on the grounds of national security considerations: violation), *El Majaoui and Stichting Touba Moskee v. the Netherlands* [GC], judgment (strike out) of 20 December 2007, §§27-35 (refusal of work permit for position of imam struck out after a subsequent application for permit had been successful).

on member States to recognise the need to provide international protection for those seeking asylum due to religious persecution. On a more general note, the Assembly also called member States to⁴²¹:

- reaffirm that respect of human rights, democracy and civil liberties is a common basis on which they build their relations with third countries, and ensure that a democracy clause, incorporating religious freedom, is included in agreements between them and third countries;
- take account of the situation of religious communities in their bilateral political dialogue with the countries concerned, in particular those countries in which blasphemy laws are in force;
- promote, both at national and Committee of Ministers level, a policy which takes into consideration, in foreign relations, the question of the full respect for, and the effective protection of, the fundamental rights of minorities defined by their religion or beliefs.

421. PACE Resolution 1928 (2013) on “Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence”, §§ 9.2, 9.3, 9.7 and 9.14.

APPENDIX – SELECTION OF RELEVANT GOOD PRACTICES FROM MEMBER STATES⁴²²

The promotion of awareness and tolerance of religious diversity / La promotion de la sensibilisation et de la tolérance de la diversité religieuse

1. In **Italy**, the fundamental elements of the constitutional law governing the organisation of the State include the principle of pluralism within the framework of the value of democracy and the principle of equality.
2. The Radio and Television of the **Slovak Republic** broadcasts programmes, which *inter alia* develop national awareness and cultural identity of its citizens regardless of faith and religion. The programmes reflect diversity of opinions and political or religious approaches in order to promote the development of civil society. It provides a space for all churches and religious organisations registered according to special regulation. The **Romanian** Law on Broadcasting from 2002 stipulates that broadcasting and retransmission of services and programmes has to accomplish and ensure political pluralism and cultural, social, linguistic and religious diversity, etc.
3. **Finland** launched a Diversity Charter in 2012 which some 40 organisations had signed by May 2014, most of them private companies. A network has been established to implement the Charter under the coordination of the Finnish Business & Society and supported by the Ministry of Employment and the Economy. The network prepared an action plan, has organised workshops and annual seminars. It also maintains a webpage and a data bank on the best practices of diversity management and offers an on-line training package “How to get started?” and a self-assessment tool. Furthermore, Finland is promoting diversity management in public sector organisations under the *YES Equality is Priority* project, funded from the EU PROGRESS programme. In 2013, the project mapped diversity management in the public sector and organised a seminar for municipal leaders to describe the benefits of diversity management.

422. The examples are presented in the language in which they were submitted. They are based on contributions received from a large number of member States contained in a compendium of national good practices (CDDH-DC(2014)004rev2). This document will be updated regularly on the CDDH’s website on “Human rights in cultural diverse societies”.

4. **Spain** created a “Foundation for Pluralism and Coexistence” with the purpose of (i) promoting freedom of religion by cooperation with minority faiths; (ii) acting as a space for investigation, debate and a starting place for public policies concerning freedom of religion and conscience. Furthermore, a “Religious Pluralism Observatory” was created with the main objective of guiding governments and authorities in implementing management models adjusted to the constitutional principles and the regulatory framework governing the exercise of the right to freedom of religion. It also provides updated data at municipality level on places of worship of different faiths, makes guides to support the governance of religious diversity, identifies and promotes good practices of governance of religious diversity. The “Advisory Committee on Religious Freedom” under the Ministry of Justice provides advice to the Government on religious freedom. The Committee can also advise or inform other public administrations upon request. It is mandated to issue reports on any state regulation aimed at promoting religions as well as *notorio arraigo* resolutions. The Committee is presided by the Minister of Justice, has seven members from ministries dealing with religious issues, six members with expertise in the field of religious freedom, and twelve representatives of the churches, faiths and religious communities and federations recognised with *notorio arraigo* status. The Committee fulfills the function of making proposals, preparing annual reports and even recalling information from any authority concerning religious freedom. It works actively in focused teams on issues concerning the opening cult centres, religious marriages, religious festivities, religion in the workplace, cemeteries for religious minorities, etc.

5. In the **United Kingdom**, the Government has taken initiatives and adopted policies to promote equality, diversity and human rights. Some examples are:

- Equality, Diversity and Human Rights Strategy for the Police Service 2010,
- Creating a fairer and more equal society 2014 – Department for Culture, Media & Sports, Government Equalities Office and Department for Education,
- The Deputy Prime Minister, Nick Clegg, launched in April 2014 the Nazi Legacy Foundation’s Diversity Programme at the National Portrait Gallery.

6. With the enactment in **Ireland** of the 2014 Human Rights and Equality Commission Bill, the new Human Rights and Equality Commission started providing advice and assistance regarding equality and human rights issues in

an integrated way. Ireland also undertook a cross-departmental review of its migrant integration strategy, of which an important element will be promoting intercultural awareness and combating racism and xenophobia.

7. En **Belgique** francophone, un Festival des Libertés est organisé annuellement par le Centre d'Action Laïque. L'exposition « Lieux sacrés, Livres sacrés » est organisée à Anvers, en Belgique néerlandophone, consacrée aux trois grandes religions du monde : le judaïsme, le christianisme et l'islam. Plus de 200 objets précieux et ouvrages emmènent faire un pèlerinage imaginaire à Rome, à la Mecque et à Jérusalem. Parallèlement à l'exposition, un programme culturel riche est organisé : promenades, théâtre, rencontres dans une église, une synagogue ou une mosquée, musique, etc.

8. In **Finland**, youth actors take into account religious holidays, such as Ramadan, in the planning of their activities; for example youth camps are not organised during religious holidays. They have also considered alternatives to handshake as ways of showing respect for religious habits. Religiously and politically independent youth work and activities do not include any religious rituals. However, anyone may *e.g.* pray or quiet down independently in a specially reserved room as they wish. Furthermore, a project to question prevailing norms has drawn attention to respect for diversity and differences and disproved "normality" presumptions. The project has produced good practices for teaching teachers to identify normative speech and behaviour in their environment and activities.

Promoting intercultural dialogue / Promouvoir le dialogue interculturel

9. The **Estonian** Ministry of the Interior is organising roundtables for the representatives from different religious communities and denominations and the feedback on these events has been positive. The **Romanian** State Secretariat of Religious Affairs has organised a number of national and international manifestations which aim at promoting inter-religious and inter-confessional dialogue and at protecting freedom and fundamental rights. This institution supports, even financially, manifestations organised by the religious cults and meetings and conferences aimed at enhancing interreligious communication.

10. In **Finland**, the national religious leaders representing Islam, Christianity and Jewishness issued a joint statement in 2011 in support of freedom of religion. The same year Jews, Muslims and Christians in Finland founded an interreligious association to support the maintenance of societal and religious peace in the country. Also, the Finnish Ecumenical

Council promotes communion between communities based on Christianity and constitutes a forum for joint discussions among Evangelic-Lutheran, Orthodox, Catholic and many Free-Church actors. The Advisory Board for Ethnic Relations under the Ministry of the Interior consists of a national advisory board and seven regional advisory boards across the country. It has established a permanent working group on religious and cultural dialogue, composed of representatives from ministries, churches and religious communities. It constitutes a forum for continuous dialogue and exchange of information between religious communities and authorities. It also raises problematic interreligious and/or intercultural issues in the search of solutions.

11. En **Belgique**, une plate-forme de concertation a été créée en 2014 entre les représentants des cultes reconnus et les organisations non confessionnelles et la Région flamande pour organiser un dialogue avec et entre les communautés philosophiques. Les représentants des convictions philosophiques et l'autorité flamande ont pris l'engagement de se concerter tous les trois mois sur plusieurs sujets de société et, si cela s'avère pertinent, d'agir ensemble dans le respect des valeurs fondamentales telles que la liberté, l'égalité, la solidarité, le respect, la citoyenneté, etc. L'autorité joue à cet égard un simple rôle de facilitateur et ne participent pas activement au dialogue.

12. La **Suisse** a créé en 2006 une plateforme de dialogue « Conseil suisse des religions » composée de personnalités dirigeantes des trois Eglises nationales : la communauté juive, la paroisse orthodoxe et d'organisations islamiques. Ce Conseil fonctionne également comme un partenaire de contact pour les autorités fédérales. De 2009 au 2011 la plateforme « Dialogue avec la population musulmane – Echange entre les autorités fédérales et les musulmans établis en Suisse », avait pour but de mettre fin aux craintes et aux préjugés qui entourent l'islam dans la société majoritaire et de lutter contre l'hostilité et la stigmatisation croissantes dont sont victimes les personnes considérées comme musulmanes. De ce dialogue est ressortie la reconnaissance des lignes directrices fixées dans la Constitution, à l'instar de l'égalité devant la loi, de l'Etat de droit et de la démocratie. Par ailleurs, le rapport relatif à ce dialogue présente les mesures prises par la Confédération en vue d'encourager l'intégration et l'égalité des chances des musulmans et de garantir la coexistence pacifique de toutes les personnes vivant en Suisse. Un exemple de ces mesures est le groupe de travail « Programmes de formation ou de formation continue pour les imams et les personnes chargées de l'encadrement religieux », mis en place en 2010. De plus, le Programme national de recherche « Collectivités religieuses, Etat et société », achevé en 2012, avait pour objectif d'étudier scientifiquement les mutations du paysage religieux suisse au cours des dernières décennies et de fournir des résultats exploitables

pour les autorités, la sphère politique, les écoles et les collectivités religieuses. Le but était de favoriser la compréhension entre les collectivités religieuses, mais aussi des collectivités religieuses envers les personnes sans religion.

13. **“The former Yugoslav Republic of Macedonia”** has hosted a number of international events such as the World Conference on Dialogue among Religions and Civilizations (2007, 2010 and 2013) and the Meeting of Leaders of Islamic Religious Communities in the Balkans. In 2011, the country opened a Memorial Holocaust Centre of Jews and an International Declaration honouring the memory of Holocaust victims was adopted. On the occasion of Europe Day in 2011, a joint Declaration was adopted by the leaders of the Islamic religious community and the Jewish community. In 2011, the Commission for Relations with Religious Communities and Religious Groups published a Map of Places of Worship of the five largest religious communities. In 2012, a social awareness campaign for religious tolerance was commissioned by the Government which included a first ever joint prayer between Christians and Muslims. This theme was also used for a two-minute clip “Ten Meters Apart” which won the Titanium Lion award in at Cannes International Festival of Creativity in 2013.

14. In **Austria**, the Task Force “Dialogue of Cultures” under the Ministry for Europe, Integration and Foreign Affairs implemented initiatives such as:

- The 5th Global Forum of the United Nations Alliance of Civilizations held in Vienna in 2013 under the overall title “Promoting responsible leadership in diversity and dialogue”. In this connection a youth event was also organised.
- The training project entitled “Training in dialogue and integration for imams, spiritual advisors and mosque associations” implemented in partnership with the Islamic Community in Austria as well as the Turkish Presidency of Religious Affairs (Diyanet). The project also includes training for “female delegates” of mosque associations and for voluntary delegates for dialogue.
- The National Action Plan for Integration has since 2011 focused on intercultural and interreligious dialogue. A platform “Dialogue Forum Islam” was created in 2012 which aims at exchanging thoughts and addressing issues, such as Islamism, islamophobia and integration.

15. Both **Austria** and **Spain** are co-founders, alongside Saudi Arabia, of an international organisation “King Abdullah Bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue” which is based in Vienna. The Holy See is a Founding Observer.

16. In **Portugal**, the High Commission for Migration, Public Institute provides for civil society, free of charge, a training module on inter-religious dialogue, in which the importance of religions and beliefs in a pluralistic society and world is discussed. Furthermore, in 2011 it produced a brochure “*Inter-religious Dialogue. 33 Ideas to Think and Act*” and a leaflet “*Inter-religious Dialogue*”.

Striking a fair balance between freedom of thought, conscience and religion and other rights, in particular freedom of expression, freedom of peaceful assembly and freedom of association / La recherche du juste équilibre entre la liberté de pensée, de conscience et de religion et les autres droits, en particulier la liberté d'expression, la liberté de réunion pacifique et la liberté d'association

17. In 2012, the **Polish** Supreme Court, in the context of examining case concerning an artist who had torn up the Bible during his concert making comments considered as insulting by some persons, adopted a resolution which provided some clarification on the balancing of various freedoms. It stressed the need to differentiate acts being demonstratively insulting to one’s feelings from the expressions consisting of public presentation of opinions that constitute realisation of the freedom of expression and of conscience, also in the form of artistic creation. An expression or behaviour which expresses negative attitude to an object of religious worship or which uses this object as part of artistic creation, does not constitute an insult to the object of religious worship (and in consequence does not constitute an insult to religious feelings of other persons) if in view of its form it does not contain humiliating or abusive elements. The character of a given expression, behaviour or artistic creation should be assessed in objective manner, by reference to cultural norms binding in a given society. The artistic or scientific goal of the action of the perpetrator is, however, not sufficient to exclude insulting character of this action in view of its form.

18. In a judgment concerning the revocation of asylum status to a foreign citizen who intended to produce a film in **Spain** (“Innocence of Muslims”) jeopardizing public security, the Spanish Supreme Court found that, in the light

of the margin of interpretation doctrine, there had been no breach of Articles 9 and 10 of the Convention when balancing freedoms of expression and religion and national security concerns.

19. In addition, **Spain** and the **Holy See** have developed criteria on the reconciliation of freedom of expression and religious freedom. Particularly, the Audiovisual Catalanian Council has published recommendations on the matter in 2002.

Thematic issues / Questions thématiques

A. Individual right to freedom of thought, conscience and religion / Le droit individuel à la liberté de pensée, de conscience et de religion

Wearing of religious symbols and clothing (dress codes) /

Port de symboles et de vêtements religieux (codes vestimentaires)

20. In Poland, persons wearing headgear in accordance with their denomination have a possibility to enclose photos showing them wearing such a headgear, to their passport applications, visa applications, applications for documents issued for foreigners or in the documents of asylum seekers, in accordance with the requirements set by law (e.g. appropriate visibility of the oval of the face, confirmation of membership of the religious community). Also the **Serbian** Law on Identity Cards establishes that a person, who in conformity with his or her national or religious affiliation or folk customs, is wearing a hat or a scarf as an integral part of his or her costume, can be photographed with a hat or a scarf, in compliance with the manner of obtaining biometric data. **Spain** also allows that personal photographs in official documents can be made wearing veils or scarfs in accordance with a religious identity (not only Islamic, but also Catholic nuns, for example). This right is recognised in the 2006 General Commissary Instruction on Foreigners and Documentation on the condition that the oval of the face is recognisable and the acknowledgment of belonging to the religious community.

21. The **Turkish** Constitutional Court held in 2014 that there had been a breach of freedom of conscience and religion on account of a lawyer with headscarf being prohibited attendance in a court hearing. The head-scarf ban on female public officers has been lifted by amending the "Regulation on Dress-Code for Personnel of Public Institutions and Establishments". In accordance with a decision by the **Swedish** Chancellor of Justice, the refusal of

women dressed in niqab to attend an oral court hearing was considered not to be proportionate to the aim pursued. As there was no evidence that the women's clothing had been a threat to maintaining court order, the refusal was thus considered a violation of these women's right to freedom of religion.

Manifestation of religion and belief in various settings / Manifestation de la religion et des convictions dans différents contextes

- **Individual rights / Droits individuels**

22. Au **Portugal**, le Code Civil admet en son article 1651, paragraphe 2, l'enregistrement de tout mariage, qu'il soit célébré ou non selon la procédure civile ou religieuse prévue par la loi, à la condition qu'il ne soit pas contraire aux principes fondamentaux de l'ordre public international de l'Etat portugais.

- **At the workplace / Au travail**

23. In "**the former Yugoslav Republic of Macedonia**" Orthodox Easter, Christmas, and Ramazan Bajram (end of Ramadan) are national holidays. Other Christian, Islamic, and Jewish holidays, which are not national holidays, are government-designated religious holidays for adherents of those faiths. In **Serbia**, Christmas day (7 January) and Easter as from Good Friday to Good Monday are state holidays. Furthermore, employees have the right not to work on the following days of religious holidays: the members of the Orthodox community – on the first day of their *slava*; members of the Roman-Catholic and other Christian religious communities – on Christmas day and for Easter holidays from Good Friday to Good Monday according to their religious calendar; members of the Islamic community – on the first day of Ramadan and on the first day of Kurban Bayrami; members of the Jewish community – on the first day of Yom Kippur.

24. In **Poland**, employees belonging to churches and religious organisations whose holidays do not constitute official holidays, are entitled to be exempted from work for the time necessary to celebrate their holidays as required by their religion on the condition that the time will be worked off. Persons may submit to their employer a request for a day off not later than seven days before the date of the exemption. The employer shall inform the employee about the conditions of working off at least three days before that date. However, in case of religious holidays celebrated on a given day of each week, the employer, upon the employee's request, shall fix an individual work schedule for this employee. Persons belonging to Jewish communities and members of the Seventh-day Adventist Church are entitled to exemption from

work for the time of Shabbat. Regulations regarding holidays are included in statutes governing relations between the State and the respective churches and religious organisations

25. L'arrêt de la Cour constitutionnelle du **Portugal** n° 544/2014 concerne une personne appartenant à l'Eglise adventiste du septième jour. Cette personne a invoqué sa foi religieuse pour refuser d'assurer une garde de nuit (vendredi à samedi) et la journée de travail du samedi. Selon le rapporteur de l'arrêt, il n'est pas envisagé dans les relations de travail d'aujourd'hui qu'un salarié refuse de remplir ses obligations au nom du respect de son choix existentiel. Le respect de la liberté de conscience ne peut pas être avancé pour exiger unilatéralement la rupture du lien de travail. La liberté religieuse admet, et impose dans certains cas, une accommodation raisonnable aux exigences du travail.

26. Freedom of religion at the workplace is protected in **Spain** not only by the agreements with the major religious communities (Catholic, Evangelist, Islamic and Israelite), but also in many labour collective agreements in various sectors, at the autonomous level, and especially in the cities of Ceuta and Melilla. These labour agreements usually (i) prohibit religious freedom as a ground for denying a promotion in the company, (ii) provide for the classification as a serious fault any behaviour which infringes this freedom, and (iii) prohibit discrimination on any ground in access to employment.

- **In the armed forces / Dans les forces armées**

27. In **Serbia**, in order to fulfil the freedom of confession, religious services are organised in the armed forces. Mutual relations between the Ministry of Defence and churches, i.e. religious communities, pertaining to the performance of the religious service in the armed forces are defined in separate agreements.

28. In **Poland**, persons performing military service are entitled to participate in religious acts and rituals, to perform religious duties and celebrate religious holidays in accordance with their denomination, and to possess and use objects necessary for cult and religious practices. Military priesthoods for the most numerous denominations function in the armed forces employing military chaplains. All military units, academies, hospitals and also all soldiers participating in missions abroad are covered by religious service. Persons who for religious reasons or due to moral principles cannot or do not wish to avail themselves of the nutrition provided to all members of armed forces, can apply for a financial equivalent for nutrition.

29. In **Finland**, the general ordinance for military service (2009) takes account of such issues as equality, non-discrimination, and special issues and practical arrangements concerning religious practice (separate times for prayers, special diets, exceptional dates of festivals, fasting arrangements and spiritual support etc.). Those conscripts who have a special diet for religious reasons are treated equally with others with a special diet.

30. In **Spain**, in addition to the provision of religious assistance to members of the armed forces in accordance with the Law on Military Career, the Ministry of Defense and the Evangelic Communities Federation jointly organizes, since 2012, a yearly "Prayer Breakfast" (in Rota Naval Base, Cádiz, in 2012, in El Goloso Military Camp, Madrid, in 2013 and in Torrejón Air Base, Madrid, in 2014).

- **At the reception centre/ Au centre de réception**

31. In **Croatia**, pursuant to the rules issued by the Minister of the Interior, foreign nationals at the reception centre can choose and consume food in accordance with their religious beliefs, and they can also contact religious communities and practice their religious rites, always respecting the religious and cultural views of others. These rules have been translated into English, Turkish, Albanian, Arab, Italian and French and are displayed at the billboard at the reception centre.

32. In **Poland**, foreigners placed in a guarded centre, are entitled *inter alia* to possess objects of religious cult, perform religious practices and avail of religious services. In each centre foreigners are entitled to nutrition compatible with the diet as declared with them in accordance with their religion. It is also possible to adjust the timing of meals to the religious norms (e.g. fast during the month of Ramadan or during Catholic or Orthodox holidays). The centres also guarantee respect for other religious principles, e.g. as regards clothing of persons staying there or access to medical treatment (e.g. access to medical staff of the same sex). The Border Guard officials undergo special training to improve their understanding of intercultural issues and increase their skills to deal *inter alia* with vulnerable religious groups.

33. **Spain** also provides religious assistance in centres for foreigners as provided for in the conventions between the Ministry of Interior and the Catholic Church (2014) and the Islamic, Evangelic and Israelite Federations (2015). These instruments establish individual and communal assistance and provide instructions on worship on religious holidays and on adequate facilities, diet (Kosher, Halal), etc.

Rights of persons deprived of their liberty / Droits des personnes privées de liberté

34. In **Finland**, prison service authorities and the Evangelic-Lutheran Church have set up an advisory board for spiritual counselling in prisons. In activities related to the practice of religions in prisons, the churches and other religious communities and prison service authorities apply a cooperation procedure where the Criminal Sanctions Agency and the churches negotiate on their mutual cooperation at least every second year. An extensive project was launched between the Evangelic-Lutheran Church and the Criminal Sanctions Agency to study religion and spirituality in prisons. The project aims at producing research information and other facts to support the maintenance and guidance of prison activities that enable religious practice in a manner taking account of the prisoners' rights and the implementation thereof in practice. The churches and other religious communities have founded a network for Christian work in prisons as a cooperation body. Hundreds of representatives of different churches work and volunteer upon the permission of the prison director. Thus prisoners are ensured an opportunity to choose, according to their personal needs whether to participate in religious practice. The posts of prison chaplains and prison deacons are full-time posts filled by representatives of the majority religious community among the prisoners in each prison. Prisons are obliged to provide premises suitable for the practice of religion.

35. The **Polish** law explicitly provides that persons staying *inter alia* in penitentiary units and arrests enjoy the right to participate in acts and religious rituals and the right to fulfil religious duties and celebrate religious holidays according to principles of one's denomination. As far as possible, convicts should receive nutrition taking into account religious or cultural requirements, which is understood as an obligation imposed on the prison service of the penitentiary units to make efforts to create such a possibility (during 2009 to 2013, 12,356 persons benefited from this opportunity, in 2013 the number was 5125 persons). In penitentiary units and arrests, representatives of 23 churches and religious organisations conduct regular activities ensuring access to religious services.

36. In **Serbia**, the Law on Execution of Criminal Sanctions prescribes that convicted persons shall have the right to practice religious rituals and be visited by clergy. If there is a sufficient number of persons of the same faith in the institution, the warden shall at their request allow a clergy of that faith to visit them regularly or to conduct regular services or education in the institution. Religious services shall be performed in a separate and appropriate room in the

institution. The times, duration and manner of exercising the rights is specified in more detail in the regulation on house rules. There are plans to establish chapels at the largest institutions for convicted persons for them to exercise their freedom of religion.

37. In **Italy**, spiritual assistance to those who are subjected to a regime of deprivation of personal liberty is guided by the respect of religious freedom and the right to spiritual assistance which is codified by rules governing the prison system. The prisoners and inmates who wish to exhibit, in their own room or in their own individual space of belonging, images and symbols of their religious faith are allowed to do so. They are also allowed, during leisure time, to practice the worship of their religion, provided that this does not create harassment to the community. For the celebration of the rites of the Catholic faith, every institution has one or more chapels to serve the needs of the religious services.

38. The **Ukrainian** Law of "On Freedom of Conscience and Religious Organisations" provides for that worship and religious rites in detention. The **Slovak** Act on Detention on Remand provides a duty to take into account the cultural and religious traditions of defendants concerning the provision of food. The provision of sacred and pastoral services is *inter alia* governed by special regulations of the Ministry of Culture as well as by the agreements concluded between individual remand prisons and churches and religious organisations. L'armée **suisse** a également développé des lignes directrices sur le thème de la religion dans l'armée.

39. The **Irish** Prison Service provides a wide range of rehabilitative programmes that include spiritual services. These programmes are available in all prisons and all prisoners are eligible to use the services. The Irish Prison Chaplain Service has a crucial role in the provision of pastoral and spiritual care to the entire prison community and seeks to meet the needs of all denominations. Chaplains are mostly Roman Catholic, but also come from the Church of Ireland and Methodist denominations. Spiritual advisors of other churches/religions can also attend the prisons on a visiting basis, subject to normal visit rules.

40. In **Spain**, the General Directorate of Penal Institutions issued Instruction 6/2007 which regulates religious activity by ministers of worship and includes the following functions: office of worship, ritual services, instruction and moral and religious advice provision, and where appropriate, funeral. Halal and Kosher food is also provided in prisons. The Spanish experience in this field was reflected in a workshop held in Madrid in 2013 on the role of worship ministers regarding non-radicalization in prisons.

Situations in which individuals are obliged to disclose or act against their religion or beliefs / Situations dans lesquelles une personne se voit dans l'obligation de divulguer sa religion ou ses convictions ou d'agir d'une manière contraire à sa religion ou ses convictions

41. In **Greece**, pupils in primary and secondary education of differing religious convictions can be legally exempt from religious instruction and the related school exams upon request of their parents or guardians, without being required to declare their religious convictions or the reason for the exemption. Such exemption also applies to any other obligation of the pupils directly or indirectly linked to the subject of religious studies (Morning Prayer, church attendance, etc.). With a view to protecting personal data, the religious status or beliefs of pupils in primary or secondary schools may not be mentioned on the school reports.

42. In the view of the **Finnish** Constitutional Law Committee of Parliament, events in daily school activities which can be considered as religious practice such as morning assemblies with religious content and instructed graces before or after meals may be problematic, especially in light of the case-law of the European Court of Human Rights. If schools arrange religious morning assemblies, they must inform the pupils about them in advance and ensure that every pupil has an opportunity to be absent from such assemblies. Education providers must ensure that no-one is obligated to say grace against his or her conscience. However, it is important to ensure that the fundamental rights of all pupils are realised at the same time and that those pupils whose upbringing and conviction include the practice of saying grace have an opportunity to follow the practice. The school administration has instructed schools to replace grace with *e.g.* the practice of quieting down and showing respect for meals.

Medical treatment issues / Questions relatives aux traitements médicaux

43. The **Serbian** Law on Health Care prescribes that every citizen has the right to be provided health care while respecting the highest possible standard of human rights and values, i.e. he or she has the right to physical and mental integrity and to the security of his or her personality, as well as to the respect of his or her moral, cultural, religious, and philosophical affiliations. **Spain** has developed a guide on management of religious diversity in health centres.

44. In **Poland**, a patient staying in healthcare units providing stationary and 24-hour healthcare services is entitled to pastoral care. In case of deterioration of health or risk to life, healthcare units are obliged, at their own cost (unless separate legal regulations provide otherwise), to enable their patients contacting a cleric of their denomination. Patients should receive information on chaplains of their denomination who provide pastoral care in a given hospital, how they can be contacted and where and when religious services are held. If there is no representative of the patient's religion in a given hospital, the patient should be informed who will be responsible for enabling the contact. Implementation of the patient's rights can be discharged by the health-care units in various forms (e.g. on the basis of a civil-law contract with clerics, labour law relationship, other forms such as enabling access of a cleric to the hospital).

45. In **Finland**, the National Advisory Board on Social Welfare and Health Care Ethics has been created for the purpose of discussing general principles in ethical issues in the field of social welfare and health care and concerning the status of patients and clients, as well as to publish related recommendations. The Advisory Board submits initiatives, publishes statements and provides expert assistance, prompts public debate, and disseminates information on national and international ethical issues in social welfare and health care. The Ministry of Social Affairs and Health consults the Advisory Board concerning e.g. health care issues related to the freedom of thought, conscience and religion, such as the freedom of conscience *vis-à-vis* abortion, and the freedom of religion *vis-à-vis* non-religious circumcisions of boys. Also, the Ethical Advisory Board of the Finnish Medical Association discusses questions concerning medical ethics and issues ethical statements.

Right to education of children in conformity with the parents' religious and philosophical convictions / Droit à l'instruction des enfants conformément aux convictions religieuses et philosophiques des parents

46. According to the **Ukrainian** Law "On Protection of Childhood", teachers of religious beliefs and religious preachers are obliged to educate their pupils in the spirit of tolerance and respect for people who do not practice religion and believers of other faiths. **Polish** schools are under the obligation of taking didactic measures to shape attitudes of openness and respect for religious and cultural diversity among pupils and transmit to all children knowledge about religions and denominations. Information on world religions and their impact on the development of civilisations and history of various

countries is addressed within the framework of such subjects as history and civic knowledge. In **Finland**, the instruction in different subjects must be politically independent and secular. The instruction of religion does not include religious practice. The national core curricula for basic education adopted by the National Board of Education in 2004 is however under revision and there will in future be an increased emphasis on the knowledge of different religions and irreligiousness and on the acceptance of diversity, alongside the knowledge of one's own religion.

47. In **Greece**, school textbooks have been and continue to be revised to further promote understanding and respect for different cultures and religions, as well as to enhance interest in other people's religion, beliefs and ways of life. References to different religions around the world are made in school textbooks of religious instruction, especially in junior and senior high school. Legislation was also introduced to recognise the religious holidays of different religious groups (in addition to those of the Orthodox Church), in order to ensure the equal treatment of pupils irrespective of their religious beliefs.

48. The **Italian** State grants to religious denominations with whom it has concluded a treaty, the right to respond to any requests from students, their families or educational bodies, with regard to the study of religion and its implications. Such activities fall within the sphere of the complementary didactic activities determined by the school institution, based on methods agreed upon between the religious denomination and such institutions. In the **Slovak Republic** religious education as a school subject is ensured by church or religious organisations. The religious education is taught at elementary and secondary schools. The teaching is performed by employees with the professional and pedagogical qualification, who are also authorised by church or religious organisation in compliance with their internal regulations. In **Serbia**, the curriculum for religion instruction is adopted in agreement between the Minister of Education and the Minister of Religion, at the proposal of the traditional churches and religious communities. A board has been established for the purpose of harmonizing the proposals for religious curricula provided by the traditional churches and religious communities. Textbooks and other teaching aids for religious instruction in secondary education are approved by the Minister of Education, at the proposal of the traditional churches and religious communities.

49. In **Finland**, according to the Basic Education Act providers of basic education are obliged to arrange religious education in accordance with the religion of the majority of pupils. Pupils who do not belong to any religious community and pupils belonging to a religious community who is not provided religious education in accordance with their religion are taught

ethics when requested by their parent/carer. The provider of basic education must organise ethics education if there are at least three pupils entitled to it.

50. In **Poland**, legal regulations on the organisation of the school year make it possible for the school director to plan classes in such a way so as to ensure that pupils who celebrate religious holidays on days that are not statutory holidays do not have to attend classes on these days. A school director after having consulted the school council can fix additional holidays in a given school year *e.g.* during religious holidays that are not statutory holidays. The total number of such additional free days during the school year is up to six days for primary schools, up to eight days for lower-secondary schools and up to ten days for upper-secondary schools. Also individual pupils (or their statutory representatives in case of minors) belonging to churches or other religious organisations whose religious holidays are not statutory holidays, can submit to their school a request for the exemption from schoolwork on these days, either at the beginning of the school year or not later than seven days before the date of the planned exemption. The school shall determine the manner of catching up the lost classes. Furthermore, one of the forms of ensuring the constitutional right of parents to ensure their children's moral and religious upbringing and teaching in accordance with their convictions is that "the religion of a church or other legally recognised religious organization may be taught in schools". At the same time the Constitution stresses that "other peoples' freedom of religion and conscience shall not be infringed thereby." Currently about 28 churches and religious communities with legal personality provide religious education in public pre-schools and schools. At the same time, courses in ethics are provided upon the wish of parents or pupils. Depending on the declared choices of parents (or pupils who have reached maturity), a pupil can attend religious or ethics classes, both of them or none of them. As from September 2014, the organisation of religious or ethics classes should be ensured to any interested pupil, even if there would be only one person declaring such a wish.

51. In **Sweden**, the right to education of children in conformity with the parents' religious and philosophical convictions was raised in the following two judgments. In the first case the parents of four siblings who received an online schooling at home claimed that the schools could not provide the siblings with what they needed in terms of kosher food, possibility to pray, security etc. The Highest Administrative Court held that when providing education for the siblings there were reasons to take into account their particular needs. The court also noted that the law on education established that similar situations should be handled within the public school system. It concluded that the case did not constitute exceptional circumstances as required by the law and the

siblings were consequently denied home schooling. The second case concerned parents belonging to the laestadian religious community who, on the basis of their religious belief, requested exemption for their daughter from participating in dance during sports class. The Administrative Court of second instance noted that the school had not done enough to try to find alternative ways for the pupil to show her motor skills in connection with music. Consequently, it concluded that the religious belief of the pupil and her parents should be given priority over the possibilities that the schools should have to adapt the education to the needs of the pupil. The court therefore held that there were exceptional reasons to exempt the student from participating in dance.

52. The **Spanish** laws on education provide that the State and autonomous regulations on the setting up of curricula must include the study of religious facts or secular alternatives in accordance with the parents' or tutors' religious or philosophical convictions. Spanish law requires taking into account, at the different stages of the educative curricula of basic education, the prevention and peaceful resolution of conflicts in all areas of personal, family and social life, democracy and human rights sustainable values, including the prevention of gender violence and the study of Holocaust as a historical fact. These principles are effectively developed in each educational institution, and must be set out in detail in its educational project (Art. 121 of the Organic Law 2/2006), including the way of approaching the diversity of pupils and the plan of coexistence, under the guidance and supervision of each educational public authority.

B. State relations with religious communities / Relations de l'Etat avec les communautés religieuses

Autonomy and rights of religious communities / Autonomie et droits des communautés religieuses

53. The **Serbian** Constitution stipulates that churches and religious communities are equal and separated from the State and have autonomy to freely organise their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions.

54. In **Poland**, relations between the State and churches and other religious organisations are based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. Churches

and other religious organisations have equal rights. Public authorities should be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and should ensure their freedom of expression within public life. The right of churches and other religious organisations to determine the contents of teaching about their own religion (denomination) and to ensure and prepare qualified teachers to this end, is fully respected in schools. Curricula and handbooks are elaborated and approved by competent authorities of the respective religious communities and are sent only for information to the Minister of National Education. The qualifications of teachers are determined by the churches or religious organisations in agreement with the Minister of National Education.

55. In **Italy**, both the religious denominations whose legal personality has been recognised and those without legal personality status, have the right of free exercise of religious freedom guaranteed and regulated at the constitutional level. The religious denominations that have not concluded a treaty with the Italian State can take advantage, at tax and fiscal level, of the same benefits and deductions in force for non-commercial entities, given their particular form of non-profit organisations.

56. En **Belgique**, les cultes non reconnus peuvent prendre la forme d'une A.S.B.L (Association sans but lucratif).

57. While the **Finnish** Religious Freedom Act contains provisions on *inter alia* registered religious communities, membership in them, procedures for joining and resigning from such communities, and practices regarding religious oath and affirmation, special Parliamentary Acts on the Evangelic-Lutheran Church and the Orthodox Church regulate the functioning of these religious communities. Anyone, according to their view, may join a religious community that accepts them as members. It is for religious communities themselves to decide whether their members may belong to other communities as well. (The right to resign from a religious community is recognised by way of filling a written notice to that effect with the community or any Local Register Office (a state agency). The Local Register Office sends the resignee a written confirmation of the resignation).

58. The autonomy of religious communities are recognised in **Spanish** law, essentially by the Organic Law 7/1980 on Religious Freedom (Arts. 2 and 6), and by agreements with the major confessions. Each religious community can adopt the form that suits its interests (mainly the non-profit associative, but also others such as mere goods communities, etc.). To benefit from the religious status they must be registered in the Religious Entities Registry

(Ministry of Justice). Autonomy is also recognised by the participation in the Advisory Committee on Religious Freedom, which includes 12 representatives of these communities.

Registration and recognition / Enregistrement et reconnaissance

59. In “**the former Yugoslav Republic of Macedonia**”, the 2007 Law on the Legal Status of Church, Religious Community, and Religious Group ensures equal legal status to all churches, religious communities, and religious groups, providing them with equal conditions for registration and building religious facilities. The Skopje Court II is responsible for registering religious groups.

60. In **Poland**, the registration only results in acquiring legal personality by a given community as there are no legal obligations that would make religious activity by persons creating religious communities dependant on registration. Churches and other religious organisations acquire legal personality and establish relations with the Polish State by way of either international agreement, statute governing relations between the State and respective churches or religious organisations, or registration in the Register of churches and other religious organisations held on the basis of the *Act on guarantees for freedom of conscience and denomination* (by March 2014, 174 churches and other religious organisations have established relations with the Polish State in one of these forms).

61. En **Belgique**, certains cultes peuvent obtenir une reconnaissance de l'Etat fédéral soit pour des raisons *historiques* (le culte catholique, le culte protestant ou le culte israélite), soit parce qu'ils *répondent à des critères jurisprudentiels* (culte anglican, islamique, et culte orthodoxe). Le service compétent du ministre de la Justice réalisera une étude approfondie pour vérifier si toutes ces conditions ont été remplies de manière cumulative. Si cela est le cas une demande d'avis s'ensuit auprès de diverses instances en vue de vérifier l'impact financier d'une éventuelle reconnaissance sur les communautés locales et le niveau fédéral en ce qui concerne les traitements des Ministres du culte et des délégués. Si les avis obtenus sont favorables, le Conseil des Ministres décide de soumettre ou non au Conseil d'Etat un avant-projet de loi portant reconnaissance du culte ou de l'organisation non confessionnelle en question. Le Conseil des Ministres décide finalement si l'avant-projet de loi est transmis à la Chambre des représentants. Celle-ci examine le projet de loi et octroie une subvention de structuration et/ou accorde la reconnaissance. Pour toute décision négative prise au cours de la procédure, le culte ou l'organisation non confessionnelle peut introduire un recours devant le Conseil d'Etat. La loi du 21 juin 2002 a pour objet le support

par l'autorité fédérale des traitements et pensions des délégués des organisations reconnues par la loi qui offrent une assistance morale selon une conception philosophique non confessionnelle.

62. In **Greece**, Law 4301/2014 introduced a new form of legal personality which is open to religious communities and their organisations. A union of individuals belonging to the same religious community may acquire the status of a "religious legal person", if they so wish, by submitting before the competent court a request for registration, signed by at least 300 members of the community. The decision to register a "religious legal person" is taken by the court, without government interference. At least three "religious legal persons" may associate to form an "ecclesiastical legal person". The legal personality of the Catholic Church in Greece and some other existing churches and their legal entities has been recognised *ex lege*. Religious communities which do not wish to seek the status of "religious legal persons" may obtain a legal status under the general provisions of the Civil Code or operate as unions of persons.

63. In **Finland**, the Patents and Registration Office is responsible for registration of religious communities assisted by the Ministry of Education and Culture which has created a committee of experts, whose duties are regulated by the Religious Freedom Act. The Committee is composed of three members, who are experts respectively on religions, societal matters and legal matters. The secretary and presenting official of the committee is an official designated by the Ministry of Education and Culture. Both the fact that the bylaws of the communities registered with the Patents and Registration Office are publicly available to anyone and the explicit statutory right to resign from the communities contribute to the legal protection of their members. Registered religious communities are entitled to apply for government transfers for their activities. The amount of the operational subsidies granted to them is based on the number of their members. Such communities may also apply for subsidies for construction projects.

SPAIN / ESPAGNE

64. In **Spain**, the Additional Provision 17 of the 2013 Law on Rationalization and Sustainability of Local Government refers to the need to obtain a certificate of the Religious Entities Registry for opening of public worship places and for their public recognition, which will mention the place where the worship place will be built. This is, on the one hand, to avoid that local entities give unjustified rejections to requests for permission to establish a worship place, and, on the other, to ensure that the worship place will have all the benefits implied in its religious status. Moreover, the future regulation on Religious Entities Registry (expected for summer 2015) will contain the

principles set by the Joint Guidelines on Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission. Inscription in this Registry is essential for the acquisition of legal personality as religious associations (religious movements can adopt any form, but they will be not recognised as such until registration), and allows many benefits towards self-organisation, such as criminal protection, collective procedures protection, tax benefits, administrative situations, etc.

*Assessment of religious movements (sects) /
Évaluation des mouvements religieux (sectes)*

65. In **Serbia**, the Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of the child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

66. En **Belgique**, la loi du 2 juin 1998 a institué un Centre d'information et d'avis sur les organisations sectaires nuisibles et d'une cellule administrative de coordination de la lutte contre les organisations sectaires nuisibles.

67. In **Finland**, an association, which provides support to victims of religions, has initiated public discussion on phenomena that are problematic from the perspective of the freedom of religion. Its volunteers also offer peer support to individuals whose human rights have been violated by religious communities. For its activities it receives public support from Finland's Slot Machine Association.

68. According to the **Polish** Act on guarantees for freedom of conscience and denomination, influence on other persons by research or psychological experiments does not fall under the notion of performance of religious functions.

*Property (including issues related to places of worship, cemeteries etc.) /
Propriété (y compris les questions relatives aux lieux de culte, aux cimetières, etc.)*

69. In **Greece**, a joint circular clarifies and provides guidance on the implementation of the legislation on the granting of a permit to establish and operate places of worship of religious communities other than the Orthodox Church. The circular, while fully respecting the right of persons belonging to a religious community to practice freely and without any impediment their

religion, aims at ensuring through appropriate regulations both the safety and protection of those gathering in the place of worship and the safety and quality of life of those living nearby, thus safeguarding and promoting social peace and mutual understanding.

70. In **Italy**, the State Council reaffirmed in November 2010 that the right to worship must be exercised in accordance with the rules drawn up by the planning regulations that explicitly seeks to balance the different possible use of the land. The construction of places of worship is subject to the issuance of a building permit; for this purpose it is necessary that the building is designed to be built in an area designated by the urban planning for the construction of places of worship. The possibility for all religious denominations (without any distinction between the Catholic faith, the non-Catholic ones or those faith with which a treaty has not been concluded) to be recognised by the municipalities as beneficiaries of areas devoted to worship, has also been reaffirmed by the Constitutional Court more than once. The court, in particular, has declared the constitutional illegitimacy of regional provisions that limited the exercise of worship (and thus also the construction of buildings allocated to it) for denominations that have signed a treaty with the State.

71. In **Spain**, the situation of worship places is constantly followed via the voluntarily collection of data in the Religious Entity Register by the Spanish Observatory of Religious Freedom, which reports on its evolution, except in respect of the Catholic Church which has its own directory. In order to strengthen and improve the possibility of burials according to Islamic, Israelite and other confessions a joint working group (communities, Federation of Municipalities and an number of relevant ministries) has been set up under the Advisory Committee on Religious Freedom. For example, in 2015, an agreement was signed between one of the main burial enterprises and the Federation of Spanish Buddhist Communities.

Financing and taxation / Financement et taxation

- **Financing / Financement**

72. In **Serbia**, the Directorate for Cooperation with Churches and Religious Communities has its own budget from which, according to the programme methodology, aid shall be provided for registered churches and religious communities. In accordance with the law, churches and religious communities finance their activities with income from their property, endowments, legacies and funds, inheritance, donations and contributions, other non-profit transactions and activities.

73. The **Slovak Republic** has established the 'Expert Commission on Solution of Churches and Religious Organisations Financing Issue' consisting of 15 members representing state authorities and churches and religious organisations. The task of this commission is notably to prepare expert papers concerning the creation of an optimal model for churches and religious organisations financed in the Slovak Republic.

74. In "**the former Yugoslav Republic of Macedonia**", the financing of a church, religious community or religious group, as well as the expenditure of the financial assets, is in accordance with the legislation applicable to non-profitable organisations and organisations of public interest.

75. A judgment in **Sweden** concerned the refusal of a request from the religious community of Jehovah's Witnesses for state funding on the grounds that it did not fulfil the legal requirements of contributing to the fundamental values of society since it called upon its members not to participate in political elections. In the light of the principles of the State's duty of neutrality and impartiality preventing it from evaluating the legitimacy of different religious beliefs, the Highest Administrative Court concluded that, although the right to vote in fair and free elections is a fundamental value upon which society is founded, citizens have the right not to participate in elections. Consequently, the court held that the government had no legal basis for denying Jehovah's Witnesses state funding.

- **Taxation**

76. In **Poland**, legal persons of churches and other religious organisations are exempted from taxation on their income stemming from non-commercial activity. In this regard, they are not obliged to keep documentation required by tax regulations. The income from commercial activity of legal persons of churches and other religious organisations and of companies in which these persons are sole shareholders, is exempted from taxation to the extent in which this income has been designated to such goals as *inter alia* cult, education and upbringing, scientific or cultural goals, charity, preservation of monuments or sacral investments. The law also envisages other tax exemptions, e.g. on immovable property of such legal persons, and also some customs exemptions. Donations for the purpose of religious cult give the basis to tax credits applicable under the laws on income tax of natural persons and legal persons respectively.

77. The **Serbian** law prescribes that with respect to undertaking business activities and providing income, churches and religious communities may be entirely or partially exempted from tax and other obligations. The law also

prescribes that natural and legal persons that have given a contribution or donation to a church or religious community may be exempt from respective tax obligations.

78. In accordance with the **Ukrainian** Tax Code, non-profit institutions and organisations include registered religious organisations. Profits of non-profit organisations such as money or property received free of charge or at a non-repayable financial assistance or donations or any other income from religious services as well as passive income are exempted from tax. In accordance with the Tax Code religious organisations whose statutes (regulations) are registered in accordance with the law are exempted from land tax, in cases of the construction and maintenance of religious and other buildings necessary for their activities.

79. In **Spain**, the main confessions duly registered obtain certain fiscal benefits, in particular as non-profit organisations, as provided in agreements and in accordance with tax regulations. From the patronage perspective, tax benefits are established for donations to non-profit associations declared of public utility, NGOs and religious organisations duly recognized (Law 49/2002).

C. Protection of individuals on account of their thought, conscience and religion / La protection des personnes en raison de leur pensée, conscience et religion

*Protection of persons belonging to minority religious groups /
Protection des personnes appartenant à des groupes religieux minoritaires*

- **Legislation and institutional frameworks /
Législation et cadres institutionnels**

80. Amendments to the **Slovak** Anti-discrimination Act of 2013 extend the definition of indirect discrimination to also cover threat of discrimination. At the same time, the definition of the affirmative action was modified to expressly include the elimination of disadvantages resulting from discrimination based on racial and ethnic origin, or affiliation with a national minority or ethnic group.

81. The **United Kingdom** Equality Act 2010 provides protection on the basis of a number of protected characteristics, including religion/belief and race. It codified and replaced previous complex and numerous acts and

regulations which formed the basis of anti-discrimination law with a single Act making the law easier to understand and strengthening protection in some situations. The Act requires equal treatment in access to employment as well as private and public services, regardless of the protected characteristics, including race religion or belief.

82. In “**the former Yugoslav Republic of Macedonia**”, the 2010 Law on the Prevention of and Protection against Discrimination makes legal protection much more accessible, especially by providing for the establishment of a Commission for Protection against Discrimination, and by setting forth a special court procedure in this regard. Furthermore a number of trainings/ campaigns have been organised by various stakeholders aim at raising the public awareness about the non-discrimination principle.

83. Since 2008, **Finland** has had a national system for monitoring discrimination based on *e.g.* opinion, belief and religion. It also created the *Discrimination Monitoring Group*, consisting of representatives of different authorities, research institutes, advisory boards, the Sámi Parliament, the labour market parties, and umbrella organisations for groups vulnerable to discrimination. One of the actors represented in the Group is the Finnish Islamic Council. In 2012, the Ministry of Employment and the Economy published a research report conducted by the University of Helsinki on work discrimination in the Finnish labour market.

- **Policies / Politiques**

84. The Council of Ministers of **Poland** adopted the National Programme of Action for Equal Treatment for 2013-2016 which constitutes a horizontal governmental strategy for equal treatment in all sectors of the society (*i.e.* anti-discrimination policy, labour market and social security, counteracting violence, education, health care, access to goods and services). It sets concrete goals and priority actions for equal treatment and measures of preventing discrimination on the grounds of *inter alia* religion and belief.

85. In Spain, one of the main key tools of the “Plan Estratégico de Ciudadanía e Integración” is the Integral Strategy against Racism, Racial discrimination, Xenophobia and connected forms of intolerance, approved by the *Consejo de Ministros* in 2011, to coordinate the actions of public authorities and civil society in response to the challenges posed by racist attitudes and manifestations, by (i) upgrading relevant statistic institutional information systems, (ii) strengthening cooperation networks between institutions and entities, and (iii) the design and implementation of prevention programmes directed at especially vulnerable groups. Spain has also developed an Action Plan 2012-2020 for Development of its Gypsy Population.

- **Surveys, awareness-raising and training / Enquêtes, sensibilisation et formation**

86. Since 2011, the **Greek** Government, with the cooperation of all competent ministries, every year cedes for free the use of two housed places in the Peace and Friendship Stadium and the Olympic Sports Centre (the most important sports venues of the capital) as well as many other smaller facilities in municipalities all over the country during the celebration of Ramadan (Eid al-Fitr) and the Feast of Sacrifice (Eid al-Adha) for Muslims wishing to participate. Furthermore, the Ministry of Education and Religious Affairs, in cooperation with the Jewish Museum of Greece, organises in various cities training seminars for teachers on teaching the Holocaust. Moreover, the Police has published and distributed to all members of the police personnel a “Guide of conduct of the Hellenic Police towards religious and vulnerable social groups” giving clear instructions to police officers on the treatment of persons belonging to different religious groups (Muslims, Jews, Hinduists, Sikhs and Buddhists) in the discharge of their functions (in particular identity checks, apprehensions, arrests, detention).

87. In **Spain**, a seminar entitled “Police in front of problems of racism, xenophobia and discrimination of minorities in multi-ethnic societies” was organised in the National Police Academy of Ávila. The Sociologic Investigations Centre, financed by the Ministry of Work and Immigration, produced periodical reports, within the framework of a national survey, which incorporate parameters to monitor the evolution of racist or xenophobic attitudes in the Spanish society. The data obtained was used for the publication of a “Report of the evolution of racism and xenophobia in Spain” (2008-2011), allowing to draw in perspective the evolution of attitudes toward immigration. Also periodically, the National Health Survey by the National Statistics Institute includes questions about impressions on discrimination in certain situations, its causes and frequency, and the European Health Survey also analyses certain features on discrimination in workplaces.

88. In **Poland**, the Museum of the History of Polish Jews was inaugurated in 2014, which not only preserves the rich heritage of the Polish Jews, but also conducts numerous initiatives to foster dialogue and mutual understanding. Since 2003 the Polish-Israeli programme of meetings of young people “Preserve the memory. The history and culture of two nations” is implemented by the Centre for Education Development in Warsaw (in-service teacher training centre working under auspices of the Polish Ministry of National Education) and Yad Vashem Institute in Jerusalem. This programme, in which about 20,000 pupils and 550 teachers from more than 450 schools from Poland and Israel have participated by 2014, has enabled to create platforms for

dialogue and cooperation and deepen mutual awareness of the centuries-old history and traditions. In 2010-2012 Poland implemented the Project "Education facing the challenges of migration" aimed at schools with migrant pupils, decision-makers and educational institutions. The project also looked at new working methods for integration of immigrants in the local communities.

89. In 2000, **Italy** adopted a yearly "Day of Memory" which is on 27 January, date of the dismantlement of the gates of Auschwitz. In 2003 the National Museum of Italian Hebraism and the Shoah was established in the municipality of Ferrara. In 2005 a grant was approved for the conservation and restoration of the cultural, architectural, artistic and archival Jewish patrimony in Italy.

90. In 2013-2014, the **Estonian** Ministry of the Interior organised training for the spiritual leaders and board members of the religious communities concerning the participation in civic society. At the same time, the Academy of Security Sciences organised training for police officers in all prefectures of the Police and Border Guard Board on the main theme of religious and cultural aspects to be taken into account with regard to the principles of freedom of thought, conscience and religion.

91. En **Belgique** francophone, différents projets sont menés permettant de mieux « vivre ensemble », comme le Programme d'Education à la Citoyenneté du Centre communautaire et laïc juif « La haine, je dis non ! » destiné aux enseignements primaire, secondaire et au monde associatif, ainsi que le projet de la Commission Justice et Paix Belgique francophone « Conflits inter-convictionnels à l'école : des opportunités pour découvrir l'Autre ? ».

92. In 2011, **Austria** launched a project entitled "Together for Austria" with the goal of motivating young people and breaking down prejudice against immigrants and thus preventing tendencies of discrimination.

93. Au **Portugal**, la Pastorale des Gitans avec l'Eglise, possède un bulletin informatif trimestriel sur internet, "Caravana" qui informe sur les différents événements en Europe, par exemple un atelier promu par un centre hospitalier sur l'ethnie Gitane/Rom destiné aux cadres de l'hôpital ainsi que diverses nouvelles, nommément relatives à l'éducation des enfants Gitans/Roms.

Hate speech and hate crime on grounds of thought, conscience and religion / Discours de haine et crimes de haine fondés sur la pensée, la conscience et la religion

• **Legislative framework / Cadre législatif**

94. The **Spanish** Criminal Code has been modified to punish any attitude that may encourage, promote or incite directly or indirectly to hatred, hostility, discrimination or violence; or any actions that harm the dignity, by implying humiliation, disrespect or discredit, of a group, a part of it or against an individual for being part of it, or committed by racist, anti-Semitic, or any other discriminatory reasons referring *inter alia* to the victim's ideology, religion or beliefs, belonging to any ethnic, race or nation. The modifications will allow autonomous prosecution for acts of producing, processing or possessing of hate materials in order to distribute and provide access to third parties through its distribution, or sale, either glorifying or justifying these crimes by means of public expression, aggravating punishment when the broadcasting of the material is made by social media, internet or information technologies that make the fact accessible to a large number of people. The spreading of ideas to justify genocide is now also covered by the law. The judges will be able to arrange for the destruction, deleting or disabling of books, archives, documents or items that contain the hate crime or by which it would have been committed. In the case of distribution of the contents referred to by an internet web or information society services, the judge will be able to block the access or disrupt the service. The modifications also aim at increasing sentences when the facts are committed by organised groups. In case of legal persons as promoters of hate crimes, they will be sentenced as well with important fines and depending on the gravity of the case, the dissolution of the legal person, the suspension of its activities or the closure of its premises and facilities for a period not exceeding five years. According to the Criminal Proceedings Code the use of class actions in complaints is allowed so that every citizen is able to denounce and appear as a party in cases concerning hate crimes – a procedure often applied by NGOs and community movements.

95. Also the **Turkish** Criminal Code was amended to refer to 'hatred and discrimination' and to increase the penalty for hate offences including those based on political view, philosophical belief, religion or sect.

96. In the **Slovak Republic**, the Criminal Code establishes an act entitled "Restriction of Freedom of Conviction" which covers cases in which a person by violence, threat of violence or other serious harm forces another to participate

in a religious act, or cases in which a person without lawful authority prevents another from participation in a religious act or without lawful authority prevents another from the enjoyment of his or her freedom of belief.

97. In **Greece**, the Criminal Code, introduced by Article 10 of the new anti-racism law from 2014, increases the minimum penalty of confinement in a penitentiary or imprisonment and doubles the monetary penalties that may be imposed for racist crimes, i.e. for crimes committed out of hatred on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability of the victim. It also provides that the sentence imposed may not be suspended.

98. The **Finnish** Criminal Code criminalises ethnic agitation and aggravated ethnic agitation committed *inter alia* by threatening, defaming or insulting a certain group on the basis of its religion or belief or on a comparable basis. Genocide committed by destroying a national, ethnic, racial or religious group or another comparable group entirely or partially by the means listed in the Code is also punishable. The Code criminalises crime against humanity, which refers *inter alia* to persecution on the basis of religion as part of a broad or systematic assault on civilian population. Other punishable religion-related offences include breach of the sanctity of religion, prevention of worship, discrimination based on e.g. religion, and work discrimination. The Criminal Code lists the grounds for increasing punishments, including the commission of the offence for a motive based on religion or belief.

99. According to the **Croatian** Criminal Code, hate crime includes criminal offences committed on account of a person's race, colour, religion, national or ethnic origin. 'Hate motive' is defined as either aggravating or qualifying circumstance of the criminal act, with a more severe prescribed sanction. These include the offence of female genital mutilation, bodily injury, serious bodily injury, aggravated assault, serious criminal offence against sexual freedom and provoking riots. A Working Group for Monitoring of Hate Crime, composed of a wide range of key stakeholders, has been established by the Office for Human Rights to analyse the implementation of anti-discrimination legislation in relation to hate crime.

100. The **Italian** legal system includes specific provisions to combat racist and xenophobic speech, including actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. As for the use of racist or xenophobic language in politics, it is laid down by law that the judicial authorities are entrusted to verify the existence of criminal contents in documents, speeches and programmes made by political representatives.

101. In “**the former Yugoslav Republic of Macedonia**”, under the amendments to the Criminal Code, adopted in 2009, dissemination of racist and xenophobic material through computer systems is sanctioned. When meting out the sentence the court shall particularly take into consideration if the crime was committed against a person or group of persons or property, directly or indirectly, due to his/her or their sex, race, skin colour, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, political affiliation, etc.

102. Au **Portugal**, l'article 240 du Code Pénal se réfère notamment aux crimes de haine, couvrant le spectre de la discrimination raciale, religieuse ou sexuelle. Cet article traite de la constitution et de la participation à des associations d'incitation à la discrimination, à la pratique de tout acte de provocation, de diffamation, d'injures et de menaces envers une personne ou un groupe de personnes en raison de la race, de la couleur, de l'origine ethnique ou nationale, de la religion, du sexe, de l'orientation sexuelle ou de l'identité de genre. Les peines vont de un à huit ans en ce qui concerne la constitution d'associations, et de un à six ans en ce qui concerne les actes individuels de discrimination et de violence. L'article 251 du Code pénal traite, quant à lui, de l'outrage au motif de la foi religieuse, indiquant que quiconque offense publiquement une autre personne ou en fait l'objet de moqueries en raison de sa foi ou de sa fonction religieuse, de sorte à perturber l'ordre public, est passible d'une peine allant jusqu'à un an de prison ou à une amende.

- **Policies / Politiques**

103. In 2011, the **Croatian** Government adopted a Protocol on Acting on Hate Crime which mandates the Office for Human Rights and Rights of National Minorities with the tasks of collecting and publishing data on hate crimes as well as cooperation with civil society and international organisations. The Protocol has also developed a form of statistical monitoring of criminal and misdemeanour offences in relation to hate crime which includes data collected by the Ministry of Interior, State Attorney's Office and by Ministry of Justice. Through these tables it is possible to follow a case from the moment it is identified as a hate crime until the issuing of the judgment.

104. The **Slovak Republic** elaborated the 'Concept of Combating Extremism for 2011-2014' with the aim of creating an effective system of measures and activities focused on the protection of citizens and society against anti-social actions of individuals or groups engaging in extremism. For this purpose a Department on Combating Extremism and Spectator Violence was established at the Presidium of the Police Force of the Ministry of Interior.

105. The **United Kingdom** established a cross government Hate Crime Programme which includes the creation of a standing Independent Advisory Group composed of victims, advocates and academics. In 2012, “Challenge it, Report it, Stop it: The Government’s Plan to Tackle Hate Crime” was published, and in 2014 it was updated with a summary of action taken to date. A key part of the police response to hate crime is the True Vision web facility. The website provides information to victims and professionals, it hosts a library of free resources that can be deployed locally and it also allows for victims to report hate crime online, directly to the relevant police authority. The website is supported by social media resources and a mobile phone ‘App’ to increase the number of people who can access the services.

- **Institutional structures, awareness-raising and training / Structures institutionnelles, sensibilisation et formation**

106. In **Ireland**, the Garda (Irish Police) Racial Intercultural and Diversity Office has responsibility for coordinating, monitoring and advising on all aspects of policing diverse communities and this Office monitors the reporting and recording of hate and racist crime on a continual basis. It also supports the work of Garda Ethnic Liaison Officers who are in place throughout the country and works with minority communities at local level. These Liaison Officers work in partnership with minority groups and representative organisations to encourage tolerance, respect and understanding and to help prevent hate and racist crime. Statistics on racist incidents and information on where to go to report a racist incident continue to be made available on the website of the Office for the Promotion of Migrant Integration of the Department of Justice and Equality.

107. In **Finland**, an annual hate crime study reports all hate crime known to the police based on *inter alia* ethnic origin, religion or belief, and expression. A specific area is selected annually for study with the publishing of the information on a website (statistics, research, reports etc.). Furthermore, a report on discrimination is prepared every fourth year. The key structure for the monitoring of discrimination is the Discrimination Monitoring Group, consisting of representatives of different authorities, research institutes, advisory boards, the Sámi Parliament, the labour market parties, and umbrella organisations for groups vulnerable to discrimination. One of the actors represented in the Group is the Finnish Islamic Council.

108. In **Spain**, the Supreme Court Prosecutor for criminal procedures on principles of equality and non-discrimination was created in 2011 to offer an institutional response to discrimination phenomena. At territorial level, Special

Prosecutors on Hate and Discrimination have been created in every province. Spain has also created a Special Prosecutor on Cybercrime in every prosecutor office, as well as cybercrime specialised police groups (both in police and civil guard) at central and at peripheral levels.

109. In **Italy**, the National Office Against Racial Discriminations (UNAR) at the Presidency of the Council of Ministers is entrusted with the promotion of equality and the removal of discriminations. UNAR has enhanced its tools through an integrated action in support of victims and through a Memorandum of Understanding with the Observatory for the Security against Discriminatory Acts (OSCAD), to which it transmits reports on hate-related crimes. Initiatives and actions include awareness-raising campaigns, in particular during the “national week against violence framework”, as well as capacity-building, monitoring and data collection exercises. In 2013, OSCAD signed a Memorandum of Understanding with ODIHR for the implementation of the TAHCLE Programme (Training Against Hate Crimes for Law Enforcement). UNAR also participates in the Council of Europe campaign, entitled “No hate speech”. It is the intention to promote an integrated awareness-raising campaign involving Italian representatives of Facebook, Youtube, and Twitter. In 2014 the President of the Communications Regulatory Authority sent a letter to all private and public, national and local TV/radio stations, in which he drew attention to the risks of such messages disseminated through means of information. He stated that, within the sphere of his own competences, he will regularly carry out monitoring activities concerning the radio/TV broadcasting system by urging broadcasters to guarantee the respect for the fundamental principles enshrined in current legislation.

110. In **Poland**, the Team for Human Rights Protection acting within the Ministry of the Interior is tasked to monitor hate incidents and crimes. Furthermore, one or two district prosecution offices have been selected in each prosecution region as responsible for conducting investigations into hate crimes. Two specialised prosecutors have been appointed in these offices who receive targeted training. They also arrange educational and awareness-raising activities addressed to young people, the police and other prosecutors. The Prosecutor General and the appellate prosecution offices follow closely the developments relating to the proceedings into hate crimes with two reports being prepared each year on this topic. The Prosecutor General issued two sets of Guidelines for prosecutors: one on the conduct of proceedings in cases of hate crimes, and another on matters related to hate crimes committed using Internet. At the same time, the Law Enforcement Officers Programme on combating hate crimes is implemented in the Police in cooperation with the ODIHR/OSCE and involving NGOs. In 2013, a practical guidebook “Human being in the first place” on anti-discriminatory actions in the Police units was

made available for Police officers with guidelines of appropriate conduct for the Police officials during their contacts with representatives of various minority groups, in full compliance with the equal treatment standards. It also indicates examples of the most frequent cases of hatred, intolerance or discrimination and informs about possible partners (public institutions and NGOs) with whom Police officers could cooperate in solving concrete problems.

Matters relating to international protection on grounds of thought, conscience and religion / Questions concernant la protection internationale pour des raisons de pensée, conscience et religion

111. **Finland** undertook a study to determine how to coherently integrate freedom of religion into Finnish foreign policy, and it compiled a set of recommendations for further action. The report recommended, for example, that crisis management and conflict prevention should incorporate, *inter alia*, knowledge of the religious terrain of the target country and respect for it when conducting operations and awareness of connections between religion and politics. Human rights violations committed in the name of religion should be prevented, and incidents where the nature of conflict is concealed under a religious guise should be identified.

112. The **Italian** Consolidated Text on Immigration includes the possibility of asking for a permit to stay for religious reasons. In the **Slovak Republic** asylum may be granted to an applicant who in his or her country of origin has well-founded concerns about persecution on racial, national or religious grounds, or for the reason of advocating political opinions or affiliation to a social group.

INDEX OF CASES

A

- Agga v. Greece (No. 2)*, judgment of 17 October 2002
Ahmet Arslan and Others v. Turkey, judgment of 23 February 2010
Al-Nashif and Others v. Bulgaria, judgment of 20 June 2002
Alujer Fernandez and Caballero Garcia v. Spain, decision of 14 June 2001
Angeleni v. Sweden, decision of 3 December 1986
Arrowsmith v. the United Kingdom, report adopted on 12 October 1978
Ásatrúarfélagið v. Iceland, decision of 18 September 2012
Association les Temoins de Jehovah c. France, judgment of 30 June 2011
Autio v. Finland, decision of 6 December 1991
Avilkina and Others v. Russia, judgment of 6 June 2013
Aydın Tatlav v. Turkey, judgment of 2 May 2006

B

- Bayatyan v. Armenia* [GC], judgment of 7 July 2011
Bruno v. Sweden, decision of 28 August 2001
Buscarini and Others v. San Marino [GC], judgment 18 February 1999

C

- C. v. the United Kingdom*, decision of 15 December 1983
Campbell and Cosans v. the United Kingdom, judgment of 25 February 1982
Canea Catholic Church v. Greece, judgment of 16 December 1997
Cha'are Shalom Ve Tsedek v. France [GC], judgment of 27 June 2000
Chappell v. the United Kingdom, decision of 14 July 1987
C.J., J.J and E.J. v. Poland, decision of 16 January 1996
Collins and Akaziebie v. Sweden, decision of 8 March 2007
Cyprus v. Turkey [GC], judgment of 10 May 2001

D

D. v. France, decision of 6 December 1983

D.H. and Others v. the Czech Republic [GC], judgment of 13 November 2007

Dahlab v. Switzerland, decision of 15 February 2001

Darby v. Sweden, judgment of 23 October 1990

Dogru v. France, judgment of 4 December 2008

Dubowska and Skup v. Poland, decision of 18 April 1997

E

El Majjaoui and Stichting Touba Moskee v. the Netherlands [GC], judgment (strike out) of 20 December 2007

El Morsli v. France, decision of 4 March 2008

Erbakan v. Turkey, judgment of 6 July 2006

Ergin v. Turkey (No. 6), judgment of 4 May 2006

Eriksson v. Sweden, decision of 22 June 1989

Eweida and Others v. the United Kingdom, judgment of 15 January 2013

F

F.G. v. Sweden, judgment of 16 January 2014, referral to the Grand Chamber, hearing on 3 December 2014

Féret v. Belgium, judgment of 16 July 2009

Finska församlingen i Stockholm and Teuvo Hautaniemi v. Sweden, decision of 11 April 1996

Folgerø and Others v. Norway [GC], judgment of 29 June 2007

Francesco Sessa v. Italy, judgment of 3 April 2012

G

G.Z. v. Austria, decision of 2 April 1973

Garaudy v. France decision of 24 June 2003

Georgian Labour Party v. Georgia, judgment of 8 July 2008

Giniewski v. France, judgment of 31 January 2006

Gorzelik and Others v. Poland [GC], judgment of 17 February 2004

Gottesmann v. Switzerland, decision of 4 December 1984

Grzelak v. Poland, judgment of 15 June 2010

Gündüz v. Turkey, judgment of 4 December 2003

H

Handyside v. the United Kingdom, judgment of 7 December 1976

Hasan and Chaush v. Bulgaria [GC], judgment of 26 October 2000

Hasan Zengin and Eylem Zengin v. Turkey, judgment of 9 October 2007

Hoffmann v. Austria, judgment of 23 June 1993

Holy Monasteries v. Greece, judgment of 9 December 1994

Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria, judgment of 22 January 2009

I

Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v. Sweden,
decision of 6 March 1987

Institute of French Priests and Others v. Turkey, friendly settlement of 14
December 2000

ISKCON and 8 Others v. the United Kingdom, decision of 8 March 1994

Ismailova v. Russia, judgment of 31 August 2006

Ivanova v. Bulgaria, judgment of 12 April 2007

Izevbekhai and Others v. Ireland, decision of 17 May 2011

J

Jakobski v. Poland, judgment of 7 December 2010

Jehovah's Witnesses of Moscow and Others v. Russia, judgment of 10 June
2010

Jersild v. Denmark, judgment of 23 September 1994

Johnston and Others v. Ireland, judgment of 18 December 1986

K

Kalaç v. Turkey, judgment of 1 July 1997

Karaduman v. Turkey, decision of 3 May 1993
Karlsson v. Sweden, decision of 8 September 1988
Keenan v. the United Kingdom, judgment of 3 April 2001
Kervanci v. France, judgment of 4 December 2008
Khan v. the United Kingdom, decision of 7 July 1986
Khristiansko Sdruzhenie "Svideteli na lehova" (Christian Association Jehovah's Witnesses) v. Bulgaria, decision of 3 July 1997 and friendly settlement 9 March 1998
Kimlya and Others v. Russia, judgment of 1 October 2009
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M

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O

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U

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V

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W

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X

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Y

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Z

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CHAIRMANSHIP OF ESTONIA
Council of Europe
May–November 2016
PRÉSIDENCE DE L'ESTONIE
Conseil de l'Europe

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

High-level Seminar

Protection and promotion of human rights in culturally diverse societies Programme

Monday, 13 June 2016

4 p.m. – 6 p.m. Welcome address by Ambassador Katrin Kivi, Permanent Representative of the Estonian Chairmanship of the Committee of Ministers

Challenges faced by culturally diverse societies in Europe

chaired by Ms Gabriella Battaini-Draconi, Deputy Secretary General of the Council of Europe

- Mr Harald Bergmann, Thematic Spokesperson on Human rights at local and regional levels, Congress of Local and Regional Authorities
- Ms Anna Rurka, President of the Conference of International Non-governmental Organisations
- Mr Ioannis Dimitrakopoulos, Head of Equality and Citizens' Rights Department, EU Fundamental Rights Agency

6 p.m Cocktail

Tuesday, 14 June 2016

9.00 a.m. – 9.30 a.m. *Continued*

Mr Pierre Yves Le Borgn', Chairperson of the Sub-Committee on Culture, Diversity and Heritage of the Parliamentary Assembly and member of the Assembly's No-Hate parliamentary alliance

9.30 a.m. – 11.10 a.m.

Protection and promotion of human rights in culturally diverse societies

chaired by Ms Gabriella Battaini Draconi, Deputy Secretary General of the Council of Europe

- **How freedom of religion or belief can contribute to more diversity in society**, Dr Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief (*video*)
- **The Framework Convention and the management of diversity**, Dr Petra Roter, President *a.i.* of the Advisory Committee of the Framework Convention for the Protection of National Minorities
- **The European Convention on Human Rights and respect for diversity**, judge Işıl Karakaş, Vice-President of the European Court of Human Rights
- **Committee of Ministers' Guidelines to member States on the protection and promotion of human rights in culturally diverse societies**
 - **Previous CDDH work**, Mr Philippe Wéry, former DH-DEV Chair
 - **General presentation of the Guidelines**, Ms Krista Oinonen, former CDDH-DC Chair
 - **Adoption process in the Committee of Ministers**, Ambassador Guido Bellatti-Ceccoli, Chair of the Committee of Ministers' Rapporteur Group on Human Rights (GR-H) Discussion

11.10 a.m. – 11.30 p.m. Break

11.30 a.m. – 12.30 p.m.

Panel One: **Seeking to address the reality of discrimination and promote equality– key concepts**

chaired by Ms Françoise Tulkens, former Judge and Vice-President of the European Court of Human Rights

- *Direct discrimination, indirect discrimination and harassment* Dr. Mathias Möschel, Associate Professor, Acting Chair of the Comparative Constitutional Law Programme, Central European University, Budapest
- *Multiple discrimination*, Dr. Snježana Vasiljević, Assistant Professor, Chair of European Public Law, Faculty of Law, University of Zagreb
- *Effective equality*, Dr. Dorota Anna Gozdecka, SFHEA Senior Lecturer, Australian National University College of Law, Adjunct Professor (Docent) University of Helsinki
- *Living together in culturally diverse societies*, Mr Rodolphe Féral, Legal draftsman, Sub-directory of human rights, Directory of Legal Affairs, French Ministry of Foreign Affairs

Discussion

12.30 p.m. Lunch break

1.40 p.m. – 2 p.m. Building inclusive societies

chaired by Ms Snežana Samardžić-Marković, Director General of Democracy, DGII

- **Integration of diverse societies**, Ms Astrid Thors, OSCE High Commissioner on National Minorities

2 p.m. – 3.45 p.m.

Panel Two: **Effective implementation: Good practices**

- *Developing community cohesion in the United Kingdom*, Prof. Ted Cantle, former Chair the Community Cohesion Review Team, United Kingdom Home Secretary
- *Mother tongue as a tool for integration in Swedish schools and society*, Ms Beata Engels Andersson, Head of Department, Language Centre in Public Schools, Malmö
- *Promotion and protection of human rights from an intercultural perspective: Barcelona, City of Human Rights*, Mr Jaume Asens, Deputy Mayor of Barcelona in charge of Civil Rights, Diversity and Transparency
- *Organising intercultural and interreligious activities: a toolkit for local authorities*, Mr Harald Bergmann, Thematic Spokesperson on Human Rights at local and regional levels, Congress of Local and Regional Authorities
- *“Forgotten women” project*, Mr Michaël Pivot Director of the European Network against Racism (ENAR)
- *School for Syrian refugee children in the Russian Federation*, Mr Hussam Mohy Eddin, Civic Assistance Committee

Discussion

3.45 p.m. – 4.05 p.m. Break

4.05 p.m. – 4.30 p.m. Summing up by Ms Brigitte Konz, Chairperson of the Steering Committee for Human Rights

SPEECHES

Ms Katrin KIVI , Permanent Representative of Estonia to the Council of Europe, Estonian Chairmanship of the Committee of Ministers	179
Ms Gabriella BATTAINI-DRAGONI , Deputy Secretary General of the Council of Europe	184
Mr Harald BERGMANN , Thematic Spokesperson on Human Rights at local and regional levels, Congress of Local and Regional Authorities	187
Ms Anna RURKA , President of the Conference of International Non-governmental Organisations	190
Mr Ioannis DIMITRAKOPOULOS , Head of Equality and Citizens' rights Department, European Union Agency for Fundamental Rights	193
Mr Pierre Yves LE BORGNI' , Chairperson of the Sub-Committee on Culture, Diversity and Heritage of the Parliamentary Assembly and member of the Assembly's No-Hate Parliamentary Alliance	197
Mr Heiner BIELEFELDT , UN Special Rapporteur on freedom of religion or belief	202
Ms Petra ROTER , President a.i. of the Advisory Committee of the Framework Convention for the Protection of National Minorities	204
Ms Işıl KARAKAŞ , judge, Vice-President of the European Court of Human Rights	208
Mr Philippe WÉRY , former DH-DEV Chair	214
Ms Krista OINONEN , former CDDH-DC Chair	218
Mr Guido BELLATTI-CECCOLI , Permanent Representative of Malta to the Council of Europe, Chair of the Committee of Ministers' Rapporteur Group on Human Rights (GR-H)	223
Mr Mathias MÖSCHEL , Associate Professor, Acting Chair of the Comparative Constitutional Law Programme, Central European University, Budapest	225
Ms Snjezana VASILJEVIC , Assistant Professor, Chair of European Public Law, University of Zagreb	229
Ms Dorota Anna GOZDECKA , SFHEA Senior Lecturer, Australian National University College of Law, Adjunct Professor (Docent), University of Helsinki	234
Mr Rodolphe FÉRAL , Legal draftsman, Sub-directory of Human Rights, Directory of Legal Affairs, French Ministry of Foreign Affairs	239
Ms Snežana SAMARDŽIĆ-MARKOVIĆ , Director General of Democracy, DGII	244

Ms Astrid THORS , OSCE High Commissioner on National Minorities	247
Mr Ted CANTLE , former Chair the Community Cohesion Review Team, United Kingdom Home Secretary	250
Ms Beata ENGELS ANDERSSON , Head of Department, Language Centre in Public Schools, Malmö	256
Mr Jaume ASENS , Deputy Mayor of Barcelona in charge of Civil Rights, Diversity and Transparency	259
Mr Harald BERGMANN , Thematic Spokesperson on Human Rights at local and regional levels, Congress of Local and Regional Authorities	264
Mr Michaël PRIVOT , Director of the European Network against Racism (ENAR)	268
Mr Hussam Mohy EDDIN , Civic Assistance Committee	271
Ms Brigitte KONZ , Chairperson of the Steering Committee for Human Rights (CDDH)	276

Ambassador Katrin Kivi

Permanent Representative of Estonia to the Council of Europe

Europeans across the Continent are shocked and saddened by the cruel shooting in Orlando early Sunday in which many innocent people were killed. Our thoughts are with the families and friends of the victims, and with all who are suffering after this devastating act of terror and hate crime. On behalf of the Committee of Ministers of the Council of Europe I extend my condolences to the people of the United States and to President Obama. We share your pain and sorrow.

I would like to welcome the twenty one Ambassadors who attend this High level Seminar as well as the representative of the European Union.

It is my honour and pleasure, as the representative of Estonia which is currently chairing the Council of Europe's Committee of Ministers, to open this important seminar on the *Protection and promotion of human rights in culturally diverse societies*. This event is linked to the core principles of equal dignity of all human beings, and full and equal enjoyment of human rights and fundamental freedoms by all members of society which are of fundamental importance for the functioning of a democratic and pluralistic society.

This high-level seminar is indeed timely, as it deals with a number of challenges with which Europe is currently confronted, like migration, and general concerns, like the rising in our societies of racism, xenophobia, discrimination, exclusion, radicalisation and extremism.,

To deal with these issues, guidance provided by the case-law of the European Court of Human Rights is certainly of primary importance.

- * The Court has recognised that “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” (*Gorzelik and Others v. Poland*, GC judgment of 17 February 2004);
- * The Court also has stressed that “the harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion” (*Gorzelik and Others v. Poland*);
- * Furthermore, the Court has also stated that “diversity should not be perceived as a threat but as a source of enrichment” (*Timishev v. Russia*, judgment of 13 December 2005).

Diversity must however not lead to separation and alienation from the “common heritage of political traditions, ideals, freedom and the rule of law” (preamble

ECHR) on which Europe is founded. A necessary condition for the respect of diversity is respect for human rights, the rule of law and democratic principles. Culture or religious traditions cannot be invoked to prevent individuals from exercising their fundamental rights. This is particularly important when it comes to women's and children's rights. Practices amounting to human rights abuses, such as forced marriage, including child and early marriage, so-called "honour crimes" or female genital mutilations, can never be justified by invoking culture, religion, tradition or custom. This is also crucial to keep in mind with regard to intolerance towards lesbians, gays, bisexuals and transsexuals and notably their enjoyment of freedom of expression and freedom of association and assembly.

The Ministers' Deputies, during their thematic debate in 2012 on "Freedom of religion and the situation of religious minorities", expressed the wish to have a comprehensive overview of all the existing Council of Europe standards in this field with a view to enhancing their effective implementation. I am pleased to see that this proposal has resulted in the "**Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights**", included in the publication on the table in front of us.

During their thematic debate in March this year, the Ministers' Deputies discussed on "Rising extremism, radicalisation and xenophobia in the fight against terrorism: Building inclusive societies as a cure / The need for collective action". It is sad to remember that this debate fell between two terror attacks in Turkey and one week prior to the Brussels bomb attacks.

And also in March this year the Ministers' Deputies adopted two important instruments in this context, namely (i) their Action Plan on Building Inclusive Societies aimed at assisting in a concrete manner member States in managing Europe's diversity, through smart policies fostering mutual understanding and respect, and (ii) the **Guidelines of the Council of Europe on human rights in culturally diverse societies** (also included in the publication on the table in front of us).

- * These Guidelines are based on the Council of Europe standards as well as those of other international and regional organisations and they should serve as inspiration for member States in their effort to take legislative or other measures.
- * They were prepared by the Steering Committee for Human Rights (CDDH) last year. The committee obviously did not start from nothing: The topic 'human rights in culturally diverse societies' was already identified as a priority during the Netherlands' chairmanship of the Committee of Ministers more than 12 years ago, in 2003, which then led the CDDH to embark on intergovernmental work in this field.
- * The Guidelines address in particular the fight against violent extremism and radicalisation, building inclusive societies, integration and respect for

diversity, guaranteeing freedom of expression both off-and online, protecting against hate speech, combating intolerance and discrimination and promoting gender equality.

[They stress the need to ensure gender equality regardless of traditional or cultural attitudes (para. 32), as well as the need to combat any form of violence, particularly directed against women and girls; and violence against persons on the basis of their sexual orientation or gender identity, including in situations when the violence is perpetrated under the pretext of a cultural and religious prescription or practice. The same applies to other persons in vulnerable situations, such as children and persons with disabilities (para. 44)].

The relevance of the “Protection and promotion of Human Rights in culturally diverse societies” has far from decreased over the years; on the contrary, it is today more relevant than ever. It has to be seen as an important part of the Estonia’s priorities during its current Chairmanship, in continuity with the work conducted by the chairmanships of our predecessors, Belgium and Bulgaria. Our three priorities are (1) Human rights and the rule of law on the Internet; (2) Children’s rights and (3) Gender equality. We will be promoting by hosting and supporting a series of high-level events during the next 6 months.

Let me say a few words about each of these three topics, which are in direct connection with Human Rights in culturally diverse societies.

- (1) The **protection of human rights and the rule of law online** is more necessary than ever in these times of rapid development of information communication technologies and the accompanying impact on the lives of most individuals in Europe. There is a need to guarantee freedom of expression offline, as well as online. While the Internet facilitates the flow of information, building democracy online, it can also have negative effects by facilitating the broad dissemination of hate speech, including sexist hate speech. There is in principle no difference between hate speech on- and offline and consequently no need for specific legal standards on the matter whereas education and training on the use of internet in a manner compatible with human rights is of utmost importance.

* The Council of Europe has put in place a series of actions to combat this problem such as the Youth Campaign on hate speech on-line and the follow-up work thereof.

* In December last year ECRI adopted a new General Policy Recommendation on combating hate speech which recognises that hate speech online is an increasing problem but that the exact extent of it remains unclear, due to the lack of systematic reporting and collection of data on its occurrence. This needs to

be remedied, particularly alongside through the provision of appropriate support for those targeted or affected by it.

- * Estonia considers it important to turn more attention to the contrasting impacts of the development of information communication technologies, in order to tackle the negative effects and enhance the positive results. My authorities will contribute to the implementation of the Council of Europe's Internet Governance Strategy (2016-2019), and promote relevant Council of Europe standards.

(2) I would like to refer now to **children's rights**, another priority for my government. Investing in this matter is a driving force in creating a just and more inclusive society.

- * Education is a key tool for building inclusive societies. It is the means by which we teach our young generation respect for other ways of life, while simultaneously instilling in all young citizens our shared and universal values.

- * Moreover, education is a way to empower those who are most likely to be marginalised. Also, access to education is important to ensure that people participate as active and engaged members of a society.

- * Estonia will contribute to the new Strategy for the Rights of the Child launched at the high-level Conference in Sofia during the Bulgarian Chairmanship of the Committee of Ministers at the beginning of April 2016, by placing emphasis on three key areas; child participation, children's rights in a digital environment and children in migration.

(3) Finally, achieving **gender equality** is central to the protection of human rights, the functioning of democracy, the respect for the rule of law, economic growth and sustainability.

- * Estonia will promote the aims of the Council of Europe's Transversal Programme on Gender Equality, through the Gender Equality Strategy 2014-2017 which includes gender mainstreaming and action in a number of priority areas.

- * This Strategy refers to the problem of multiple discrimination (in its 'Introduction' and Chapter I 'Goal and strategic objectives'), already identified at the international level in the *Beijing platform for Action for Equality, Development and Peace*, and at the European level in the EU equality directives (The Racial Equality Directive and the Employment Equality Directive). We are pleased to see that the Guidelines also refer to multiple

discrimination which predominantly affects women and the most vulnerable groups of society, and which is particularly apparent in culturally diverse societies as the diversity of identities each person has is increased by the multiplicity of the cultures present in society.

I wish you a fruitful exchange of views and a constructive debate.

Ms Gabriella Battaini-Dragoni

Deputy Secretary General of the Council of Europe

Challenges faced by culturally diverse societies in Europe

This high-level seminar, with its emphasis on diversity and human rights, is extremely timely. In today's Europe, we are increasingly seeing these values put to the test. The surge in terrorism and violent extremism on our continent; the massive flow of migrants and refugees into our nations; ongoing economic hardship for our citizens; all are placing pressure on our societies – and relationships within and between communities are feeling the strain.

Against this backdrop, the Council of Europe is elevating the work we do which aims, explicitly, at protecting fundamental freedoms in culturally diverse societies: we are giving this element of our work even greater status – because we believe that this is a key way in which we can support our member States in today's sometimes tense and fragmented climate.

Our European Commission against Racism and Intolerance (ECRI) plays an extremely important role, as does the Advisory Committee on our Framework Convention for the Protection of National Minorities, the Commissioner for Human Rights, the Parliamentary Assembly, the Congress, and our youth Campaign against Hate Speech.

I would also like to mention our Intercultural Cities Programme, which brings together a growing network of cities – now over 90 – from across the world, to help develop policies for the successful and dynamic management of diversity. It is an excellent example of how we can translate, effectively, our principles and values into real, positive change on the ground.

And we now have two extremely important Action Plans guiding our intergovernmental activities in this area, too: the first devoted to “the fight against violent extremism and radicalisation leading to terrorism”, which was adopted by the Committee of Ministers in Brussels in May 2015, and the complementary Action Plan on Building Inclusive Societies, which runs from this year to 2019.

It is in this second Action Plan that our governments committed to the guidelines which we are here to discuss today – on the ‘protection and promotion of human rights in culturally diverse societies’.

They are based on Council of Europe standards relating to the principles of freedom of thought, conscience and religion, as enshrined in the European Convention on Human Rights, and they are inspired by judgments of the European Court of Human Rights. What is particularly innovative and, I hope,

useful is that the Guidelines do not consider these standards in isolation, but rather rethink and recast them through their interaction with other human rights, such as freedom of expression, freedom of assembly and the right to private life. We have sought to create a tool which reflects the often complex interplay of different rights within diverse societies; guidelines which are realistic and usable across our member States.

Through the course of the day you will delve into the details. Before you do, I would like to set out three principles which we take as our starting point and which have shaped the guidelines.

First, diversity can and should be an asset to member States. We do not see diversity as a threat, but rather as having the power to enrich our shared way of life, whether it flows from communities who have lived in Europe for generations, or from those who arrive more recently.

Indeed, the Council of Europe, at its heart, is an organisation dedicated to diversity: yes, we expect our members to meet common standards for the rights and liberties all must enjoy. Indeed, these fundamental freedoms are the soul of our Organisation, and our starting point is that they are non-negotiable for member States. Within this, however, we still recognise the huge cultural variation among our 47 members. We do not expect all in Europe to think the same, and ours is a model of cooperation based on dialogue precisely because we respect difference among nations. It follows that we value the rich diversity which exists *within* member states, too.

And we are active about it. Tolerance does not mean simply acceptance. On the contrary, it means the willingness to meet and understand others, and to recognise, as I said, that diversity can be an asset for us all. A social good to be maintained.

Second principle: diversity needs to be carefully managed.

Across our nations we have seen the damage that is done when authorities and wider society fail to engage in this task, or else pursue ill-considered integration policies, even with the best of intentions.

In some cases the result is segregation, and the marginalisation of minorities. In others, we have seen a kind of collective denial of difference, as immigrant communities, for example, are expected to shed their traditions and mimic the majority. In some cases, the politically-correct mainstream has found it so difficult and uncomfortable to address the challenges presented by diversity that they have, inadvertently, made it easier for the xenophobes, populists and nationalists presently making gains across Europe – who, by contrast, *are* willing to talk openly about people's grievances with regard to integration, and especially immigration.

The fact is that diversity cannot be ignored; it doesn't just work itself out; we need to be energetic, intelligent and ethical in the way we manage it. And, as we do so, we at the Council of Europe strongly believe that states are on safest ground when they follow clear, international standards, based on our shared values of democracy, human rights and the rule of law.

Principle number three: there is an extremely careful balance to be struck between allowing our societies to be plural spaces, in which all voices and viewpoints can express themselves, while also preventing the hate speech which can lead to violence and the stigmatisation of whole cultures or groups. Free speech, not hate speech - this dilemma is constantly present in our work on diversity. We see many of our states grappling with it. And we always tell them the same thing: be led by the Convention and the case law of the European Court of Human Rights. They are your best guide.

As the Strasbourg Court has made clear, freedom of expression, Article 10 of the Convention, extends to information and ideas which 'offend, shock and disturb'. Any restrictions on it must be proportionate, necessary and set out precisely in law. But freedom of expression is not a license to say anything: certainly not calling others to violence. And it is a right which goes hand in hand with responsibility. As the Court put it in the *Otto-Preminger-Institute* case, and I quote, "[...] whoever exercises the rights and freedoms enshrined in the first paragraph of [...] Article [10 of the European Convention on Human Rights] undertakes 'duties and responsibilities'. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs."

So, three principles to have in mind before your discussions commence. Diversity can be a powerful asset; it must be carefully managed – which means, for us, *democratically* managed; and at all times we must be alive to the need to protect free speech without legitimising hate speech. Three simple messages which are sometimes lost, but which are fundamental to the successful functioning of culturally diverse societies.

As you discuss the application of these principles through the guidelines I am sure you're your insights and conclusions will be focused on action and shaped by realities on the ground – which was very much the intention of gathering you here. As I said, the guidelines are intended as a practical instrument, aimed at human rights which are "not theoretical and illusory, but practical and effective". I look forward to hearing the outcome of this timely meeting, and I thank you for being here today.

Mr Harald Bergmann

*Thematic Spokesperson on human rights at local and regional levels,
Congress of Local and Regional Authorities*

It is a pleasure to be invited here today, to mark the beginning of the Estonian presidency of the Committee of Ministers and to have the opportunity to tell you about the local and regional dimension of the **challenges that culturally diverse societies in Europe**, as seen through the eyes of the Congress of the Council of Europe.

I am a member of the Congress. My name is Harald Bergmann and I am the mayor of Middelburg, in the province of Zeeland in the Netherlands.

The Congress brings together elected representatives from the local and regional authorities of the 47 members States of the Council of Europe.

We are 636 elected representatives - mayors (like me), councillors and members of regional parliaments - meeting in a political body that provides a voice for over 200 000 territorial communities across Europe. A body that allows us to exchange examples of good practice on the local application of the Council of Europe core values of democracy, human rights and the rule of law.

I am also the Congress 'thematic spokesperson for human rights at local and regional levels'.

The Congress has always underlined how crucial it is for local authorities to be aware of the human rights issues that affect the lives of their communities in order to achieve social cohesion and inclusion.

The Steering Committee on Human rights has explicitly recognised the role of local and regional authorities in their Guidelines on the protection and promotion of human rights in culturally diverse societies adopted by the Committee of Ministers on the 2nd of March this year, in particular in relation to the access to rights and non-discrimination as mentioned in its paragraph 62 and in relation to adopting a strategic approach towards these issues to be included in national action plans as mentioned in its paragraph 78.

The Congress welcomes this, for it sees as part of its mission to inform and educate its members in good human rights practices. We have begun holding a series of international forums, with workshops, to identify human rights issues in local policy-making and human rights in practice. The first of these was held in Graz last year and we will have one in 2017 in my own city, Middelburg.

In the last ten years, the Congress adopted a series of resolutions and recommendations that focus on what local authorities can do for successful integration of migrants: these include, to cite a few:

- migrant entrepreneurship,
- cultural integration of Muslim women,
- promoting diversity through intercultural education,
- minority languages as an asset for regional development,
- the development of social integration indicators,
- a pact for the integration and participation of people of immigrant origin in Europe's towns, cities and regions.

A compilation of all the texts adopted, are available for those who are interested.

We are currently preparing a toolkit for local authorities, which is a set of texts and digital resources, to help them organise interreligious and intercultural activities to foster more social inclusion. I will be talking about this more tomorrow afternoon in Panel 2.

To turn now to the recent particularly severe challenges facing local leaders across Europe: These include the question of migration and refugees and religious radicalisation that can lead in some cases to terrorism. The aim of our contributions and activities here is to help local and regional authorities to better understand the complexity of these situations and to find practical solutions, often exchanging successful strategies within the Congress "family".

For 2015 the theme of our two plenary sessions was local responses to human rights challenges – migration, discrimination, social inclusion. We heard the mayors of Kos in Greece, Shanleorfa and Ossmanghazi in Turkey, Kobane in Syria, Lampedusa in Italy and Calais in France, give their heart-rending accounts of the surge of migrants through their municipalities and their difficulties in dealing with the humanitarian aid as well as coping with the day to day necessities for their communities.

Also the other member states are dealing with challenges related to the issue of migration and refugees. In the Netherlands, for example, community involvement remains an important issue. Currently there are still many people who have worries and are afraid of the refugees that are coming to the Netherlands.

How to deal with all those refugees? Is it possible to create jobs, find houses for so many people? And how can we make sure they integrate in our multicultural society. A society with Western values. A society based on Human Rights. It is important to deal with these worries, to take them seriously, but at the same time raise awareness of the dreadful situation most refugees are fleeing from, so our inhabitants will realize that the people seeking refuge want to live a normal, peaceful and safe life, like you and me.

A danger of the fears living in our society, is that these fears can contribute to extremism, extreme-right extremism. This shows the importance of dialogue between the different groups in society when dealing with the migration issues.

Another form of radicalism that is important to take into account, is the form we've witnessed with the Paris and Brussels attacks.

At the 28th Session of the Congress in March last year – immediately after the first Paris attacks – the Congress adopted its **“Strategy to combat radicalisation at grassroots level”**.

Within this strategy we have adopted **“Guidelines for Local and Regional Authorities on Preventing Radicalisation and Manifestation of Hate at Grass-root Level”**, where we encourage local authorities to adopt multi-agency strategies and to take balanced and well-designed rational measures, which must be communicated to the general public in a responsible way.

Our Congress is also seeking to create an “Alliance of European Cities against violent extremism” in cooperation with the European Forum for Urban Security and the Mayors of Aarhus and Rotterdam. We hope that this will provide a space to exchange experiences and information on promising practices, adding to the existing programs and tools.

We, in the Congress, believe that in the long run, prevention is more rational and cost-effective than combatting symptoms and last-minute crises.

Prevention is the type of action that corresponds best to local authority competences. Challenges such as radicalisation can be best contained at a level closest to the vulnerable individuals so that, for example, municipalities and regional councils can have a key role to play, such as through exit programs and partnerships with schools, civil society and other local stakeholders.

We understand the need now more than ever to tackle these issues, in order to build societies where diversity is a positive added value, not a problem. Societies where we can, with full respect of human rights, approach the issue of safety and security of citizens in a balanced manner.

This topic is of utmost urgency to European local and regional authorities.

Ms Anna Rurka

President of the Conference of INGOs of the Council of Europe

Since 1949, the Council of Europe has built a world view based on respect for human rights, democracy and the rule of law. In this connection, the various legal instruments and guidelines form a roadmap for the institution's stakeholders. This also applies to organised civil society represented by 325 INGOs holding participatory status, which make up the Conference of INGOs, one of the pillars of the Council of Europe.

I should first like to make a few points to underpin just how vital the Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies are today from the INGOs' point of view.

It is only on the basis of culturally diverse societies which respect human rights that individuals can develop their cultural competences. And cultural competences are one of the pillars of social justice and of the quality of public and private services. They apply to everybody, as we must learn to live with our differences. That means we must recognise and accept the difference of others, be aware of our own difference, understand the dynamic of otherness that occurs between individuals and groups, develop cultural skills and adapt our conduct to culturally diverse contexts. To eliminate discrimination, xenophobia, racism and hate speech, we must be culturally competent. That also makes our institutions more tolerant and ensures more balanced power relationships.

I thank the drafters of the guidelines and congratulate them on devoting an entire section to freedom of assembly and association. I would just quote Article 25, which provides that "member States should encourage the participation of individuals and groups in the democratic process through the creation of a favourable environment conducive to the work of associations and political parties in which individuals and groups may interact freely with each other and pursue common objectives collectively." Obviously, although this provision applies both to NGOs and to political parties, we make a distinction between the two, drawing on Recommendation CM/REC(2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe.

The measure of a country's democracy lies above all in the dynamism and diversity of its INGOs, which form links between the various segments of society. NGOs support access to rights, supervise compliance with them and work to ensure their effectiveness. In this connection, they need both financial and logistical resources and also a significant level of independence to enable them to take action in the political and social sphere. Paradoxically, it seems at present

that it is this level of independence which is exposing NGOs to different types of pressure, restrictions or even violence.

Without mentioning the national contexts where restrictive legislation is significantly weakening the voluntary sector, there is a more general increase in cases of physical or verbal attacks on NGOs and their members. The migration crisis, which is currently the focus of high-level political debate, clearly illustrates the polarisation of society around this issue and the threats to NGOs which defend the rights of migrants and refugees, minorities or LGBTI persons. Does the fact that these NGOs are targets mean that part of Europe's population believes that assimilation rather than inclusion is the most appropriate form of coexistence? Are we experiencing a clash of civilisations? I find that hard to accept.

The picture is worrying all the same. Public discourse which identifies the relevant NGOs as threatening national interests means that public authorities and private funders prefer not to take risks and choose not to support the activities of this section of civil society. The distance generated by the prevailing discourse produces categorisation of this type and restricts the possibilities for expression and understanding, both between institutions and also between individuals.

The States that make up this great institution of the Council of Europe and we as civil society all know the direction we want to take. It is the European Convention for the Protection of Human Rights and Fundamental Freedoms that shows the way. It goes beyond values. It transforms them into legal rights for everybody which form the basis of our freedoms.

We must stand up to hatred. In saying that, I send all my condolences to the families of the victims of the Orlando attack. To all the persons affected by the attack, I would just like to say: we should be ourselves in spite of everything. We should not feel repudiated in what we are.

Hate speech reinforces conflicts. To underscore the point, I should like to share with you the message which Mr Laurent Munyandikirwa, lawyer, human rights defender and former chair of the Human Rights League in Rwanda, passed on to the Conference of INGOs when he came to exchange views with us about the hate speech which had accompanied the Rwandan genocide. He drew our attention to the explicit and implicit dimension of such speech. The implicit form is more dangerous because we do not realise that we are conveying it or may believe that it is positive (it might be in a different context). Without realising it, we may applaud and encourage hatred, as those hearing what is said fail to recognise its scale or the intentions of the speaker. Watch out for the banality of evil, as Hannah Arendt would have said.

We must explain to civil society that everything happening around us – the terrorist acts, the extremism, the mass influx of migrants and refugees into our countries and the current economic difficulties – is indeed changing the way we

live, but it does not just come out of the blue. We must start asking the right questions at last! One of them concerns the ways in which, together, we can transform tragedies into positive action geared towards solidarity. I can assure you that there are thousands of people who do so but, unfortunately, that is not very highly valued or publicised. However, what the NGOs condemn are anti-terror laws which restrict our freedoms and subject visible minorities to undue checks without judicial approval. The international standards employed to protect rights must not be compromised in a context of pressure related to the influx of migrants or terrorist threats. The protection measures taken must be proportionate to the actual threats.

All governments without exception must send out a strong and clear message against hate speech to the representatives of public authorities, the media and civil society in general.

We need more forums for debate within institutions and within local communities. Although NGOs are already active here, this is not enough, as they come up against opposing forces which undermine their efforts.

On a broader level, we need proper democratic dialogue between elected representatives and civil society. The participation of individuals and groups in the democratic process through voluntary associations strengthens collective civic action, and collective action means the exercise of a degree of power. Why are we taking less and less time to discuss proposed reforms with civil society? What are we afraid of?

Democracy is much more than a parliamentary majority, it is governance by the people for the people, with civil society acting as a fully-fledged democratic player rather than just carrying out government decisions. Organised civil society is not legally recognised just by virtue of being organised but because its structures change the world. That is the route to a better society. If the democratic system is to be consolidated, it is necessary to preserve the rule of law, which transforms economic development into social development. At the same time, it is necessary to preserve a critical organised civil society so that governments improve and move closer to voters.

It is my wish and our goal that these guidelines are put into practice within the member States. Because the strength of a policy does not lie in declarations but in their practical implementation.

Mr Ioannis Dimitrakopoulos

Head of Equality and Citizens' Rights Department, EU Fundamental Rights Agency

Challenges in protecting and promoting human rights in culturally diverse European societies

Europe is, once again, facing the challenge to ensure that those who are different because of their ethnic origin, religion or belief, sexual orientation or disability are treated equally and respected: in a word, that they are included in community life. The diversity of European society, its capacity to accommodate different religions and cultures, is its very strength; and, from a human rights perspective, the word “accommodate” can mean no less than full respect of the right to equal treatment; a right enshrined in international human rights instruments and guaranteed in the European Union by its Treaties and its Charter of Fundamental Rights.

However, the CoE 2016 report on the State of Democracy, Human Rights and the Rule of Law, as well as our own 2016 Fundamental Rights Report provide ample evidence on challenges to fulfil this right. They show that there is much to be done to achieve “conditions that enable individuals and groups to live together in their diversity and allow the expression of pluralism, tolerance and broadmindedness”, as required by the CoE Guidelines on Human Rights in Culturally Diverse Societies.

These challenges reflect the many difficulties faced by governments when they try to fulfil their duty to respect, protect and promote human rights, such as the right to equal treatment, to non-discrimination, and to religious freedom: For example, during the past year, across several European countries, many citizens greeted the thousands of refugees that came to Europe and volunteered to help them; at the same time, though, many others did not; some expressed hate by demonstrating, sometimes violently, against the set-up of asylum centres (for instance, in Germany, official data show a dramatic increase in incidents targeting asylum centres – from 203 in 2014 to 1,031 in 2015); while others expressed their fears and insecurities by voting for parties with anti-immigrant rhetoric promising a return to the lost paradise of “law and order”.

More worryingly, in some European countries, these challenges reflect a certain, publicly expressed, discomfort by policy and decision makers to fulfil their human rights obligations: For example, over the past year we heard leading politicians in Europe arguing that granting asylum, in particular to persons of Muslim faith, would “dangerously” increase ethnic or religious diversity; we heard again, the failure of Roma integration efforts attributed, collectively, to the rights holders

themselves: arguing that it is their own (poverty) culture prevents them from benefiting from integration efforts; we saw security measures to counter terrorism and radicalisation that could fail a test of conforming with the principles of necessity, proportionality and legality.

Today's High-Level Seminar comes at the right moment to underscore that indeed this is "No time for business as usual"; the very phrase chosen by the European Commission as the heading of its 2016 Work Programme: now is the time for governments to deliver on their legal commitments addressing major challenges, such as persisting inequalities, intolerance, and a sense of insecurity felt by parts of our communities.

In the EU, delivery on these legal commitments, some more than 15 years old now is urgently needed, as the evidence consistently shows that intolerance, discrimination and hate crime persist despite many measures taken over the past years by EU institutions and bodies, as well as Mss: For example:

- The Special Eurobarometer on discrimination examined last year aspects of intolerant attitudes among the general population in the EU:

In respect to the situation in the workplace, the results show that while 94% of respondents would be at ease working with a Christian colleague, this proportion drops to 84% for working with a Jew, 83% for working with a black or Asian person, 81% for working with a Buddhist and 71% for working with a Muslim, while only 63% of Europeans would be at ease, if one of their work colleagues was Roma.

In respect to more personal issues, while 89% of respondents would be at ease if their adult child had a relationship with a Christian person, this proportion drops to 76% for an atheist, 69% for a Jew and the same for an Asian person, 65% for a Buddhist, 64% for a black person, 50% for a Muslim, and 45% for a Roma person.

Do these attitudes reflect actual negative experiences? Highly unlikely, if we consider the example of

Muslims: 27% of respondents in the Czech Republic, where Muslims represent about 0.02 % of the population, expressed such discomfort, as did 37% in Slovakia, where Muslims constitute about 0.09 % of the population.

- We need data not only on the attitudes of the majority, but also on the experiences of the minorities; our Agency does this by interviewing large random samples of migrants and minorities across the EU. In 2008, we surveyed 23,500 immigrants and ethnic minorities in all EU Member States, many of whom Muslims – and we just repeated this survey to identify trends over time; in 2011, 22,000 Roma households; in 2012, 93,000 LGBT people; and, in 2013 around 6,000 Jews. Our surveys give a voice to those most likely to be the victims of hate crime

and discrimination who can report on measurable incidents, such as unequal treatment, violent assaults or verbal harassment; and also on their psychological impact – how important is this issue **for you**? How does it affect your life, your sense of belonging, your future?

The results show that hate crime and discrimination remains a problem for a sizeable proportion of respondents: 1 in 3 Muslim respondents had experienced discrimination in the year preceding the survey, and this figure is higher for those aged 16-24; one in five of all Sub-Saharan African and Roma respondents had experienced at least one ‘in-person crime’ in the last 12 months (that is – assault or threat, or serious harassment) that they considered as being ‘racially motivated’; Up to a third of Jewish respondents had experienced verbal or physical violence; a proportion of Roma respondents ranging from 25% to 60% had experienced discriminatory treatment because of their ethnic origin. And, also a quarter of LGBT respondents had experienced violence in the five years preceding the survey, with the figure rising to one in three for transgender people.

At the same time the results also show that victims and witnesses of such crimes and discriminatory treatment often do not report this, whether to law enforcement, the criminal justice system, other competent public bodies, NGOs or victim support groups. Between 57% and 74% of incidents of assault or threat suffered by members of minority or migrant groups surveyed in the EU were not reported to the police. Three quarters of Jewish respondents who said they were harassed did not report this to the police or any other organisation. 8 out of 10 LGBT respondents who were victims of hate crime did not report them to the police. The main reasons for non-reporting for all these respondents include that “nothing would change” by reporting incidents, that “such incidents happen all the time” and that they “did not trust the police”.

Confronted with such evidence the reaction of most duty bearers is defensive: discounting, downplaying or ignoring the evidence. In the long run, however, an “ostrich” strategy is not sustainable: phenomena, such as intolerance, discrimination and hate crime will not disappear without the concerted efforts of the “duty bearers”.

The European Union is therefore taking action at three levels: First, against intolerance, racism and hate; second, strengthening migrant integration efforts and placing them in a human rights context; third, providing sufficient financial resources and facilitating the coordination of actions by Member States.

- In the context of targeting intolerance and hate the Commission follows-up to the conclusions of the Fundamental Rights Colloquium of last year setting-up an EU High Level Group on Combating Racism, Xenophobia and other intolerance in order to strengthen political impetus for the EU and its Member States – the inaugural meeting is tomorrow in Brussels with the participation of CoE- ECRI and

OSCEODIHR. FRA will coordinate a dedicated sub-group of experts and focus on assisting Member States in developing a common methodology for recording of hate crimes and data collection. In parallel, on 31 May the Commission and IT Companies (Facebook, Twitter, YouTube and Microsoft) announced a Code of Conduct that includes a series of commitments to combat the spread of illegal hate speech online in Europe and strengthen partnerships with civil society.

- Second, it reviews migrant integration through the Commission's 7 June Action Plan to "ensure that all those who are rightfully and legitimately in the EU, regardless of the length of their stay, can participate and contribute" as this is key to the future well-being, prosperity and cohesion of European societies. The actions foreseen are framed in the two-way integration model, which means not only imposing obligations on third-country nationals expecting them to embrace EU fundamental values and learn the host language, but also offering them opportunities for meaningful societal and economic participation, while ensuring that their fundamental rights are fully respected.

- Finally, it makes significant financial resources available under ESI Funds to support implementation of anti-racist and integration measures: in addition to the Asylum, Migration and Integration Fund (AMIF), under the ESF, EUR 21 billion are available for social inclusion, combatting poverty and discrimination, whereas under the ERDF, EUR 21.4 billion is available for investments in infrastructure for employment, social inclusion and education as well as housing, health, business start-up support and the physical, economic and social regeneration of deprived communities in urban and rural areas.

We now have a unique opportunity in the EU to transform this financial and political capital into action. National, regional and local authorities must now join forces engaging stakeholders from local residents to key public services to achieve a real change strengthening the fulfilment of human rights.

M. Pierre-Yves Le Borgn'

Chair of the Parliamentary Assembly Sub-Committee on Culture, Diversity and Heritage and member of the No Hate Parliamentary Alliance

First and foremost I would like to thank you for inviting me to talk to you this morning at your seminar on the protection and promotion of human rights in culturally diverse societies. At the French Parliament, the *Assemblée Nationale*, I represent French citizens living elsewhere than in France, in other words those who experience cultural diversity every day of their lives and often for their entire life. I am all the more concerned by this issue because I am myself a French citizen who has been living elsewhere for almost 30 years. My career has taken me to the United States, Germany, Luxembourg and Belgium, and I am married to a Spanish woman whom I met at a Portuguese evening class in Brussels. Our 3 children have dual nationality. They have grown up speaking two languages and experiencing two cultures. Through our friends they also come into contact with other languages and cultures. My life and their lives take shape day after day in contact with diversity. And there is nothing original about my story. It is the story of millions of Europeans. It is the consequence of peace, of the consolidation of law, of freedom of movement, and of freedom full stop. Cultural diversity is a source of enrichment on a daily basis, an asset that should be publicised and shared, especially given that many Europeans may well not have had similar experiences, particularly during a period when people are afraid and tending to withdraw into their.

When we are unfamiliar with other ways of life, when there is mistrust, when we are afraid of those who are different, we deny and reject those differences. People who are different are necessarily threatening. As a result some people avoid the issue and ignore it, while others try to fight those differences. Extreme right-wing parties, their discourse and practices often demonstrate this. And not so long ago the fight was even taken as far as a presidential election in Austria. I once lived in Los Angeles. Indeed it was the first place I ever lived abroad because that is where I found my first job. And the life I lived there was not easy for I didn't have a penny to my name. Los Angeles is a fascinating city. It is rich but its wealth is very unevenly distributed. It is a city where communities live side by side rather than together, each in their respective districts, with their beliefs and their prejudices. The district where I lived was inhabited mainly by people from El Salvador. My American colleagues, who sometimes gave me a lift home, were shocked. What was a Frenchman, who was at ease in the Californian culture and whom they considered one of them, doing living among Latinos? Was I not afraid? Had I not been threatened, mugged or even beaten? No, none of those things ever happened to me. On the contrary, the intercultural experience which had been made possible by my lack of financial resources remains one of the defining experiences of my life. Through my contact with the people of El Salvador, at the

junction between Freeway 405 and Santa Monica Boulevard, I learned things about them, about America and about myself.

I was born somewhere where there was little cultural diversity. My childhood was spent in Brittany, which is where my heart still belongs. It was a very homogenous part of France on the very edge of Europe. It is less so today for all European societies, including those which resemble Brittany, have evolved substantially. The world has changed. Societies have become more diverse. Countries of emigration have become countries of immigration. One need only think of Ireland. Should we be disturbed by this tendency? Should we oppose the evolution towards cultural diversity and accuse such diversity of tearing our national identity apart, as a former President of the Republic in my country recently claimed, saying that the nation was breaking up because of sectarianism and the acceptance of the right to difference in a multicultural society? Should we be afraid? Is it right to instil fear, particularly in the run-up to elections? No. On the contrary we should try to understand, to explain, to talk of rights and duties and to act humanely, for the European project, which led to the founding of the Council of Europe in the middle of the past century, is the expression of a humanism which brings people together, the expression of the best we Europeans have to offer. That is why I am very attached to the Council of Europe, the European home of law and human rights, the ruthless watchdog which constantly reminds us all, governments and citizens, that there can be no future without scrupulous respect of the freedoms enshrined in the European Human Rights Convention and its protocols.

I welcome the initiative taken by the Committee of Ministers of the Council of Europe, which, in March 2016, adopted important guidelines for member States on the protection and promotion of culturally diverse societies. These guidelines were long overdue. They had already been prepared by the Steering Committee for Human Rights, which many of you know very well. From the very first sentence of their preamble, these guidelines stipulate that *"the increasing cultural diversity in European societies (...) is a source of enrichment which calls for mutual understanding and respect for each other"*. Enrichment is the word used and it is important. The following paragraph says that *"managing cultural diversity in full respect for the principles of democracy, human rights and the rule of law is a common challenge for all societies throughout Europe and beyond, and that integration strategies should take appropriate account of diversity"*. That is precisely what must be done. It is the objective by which we in the Parliamentary Assembly of the Council of Europe lay great store, in the hope that we will provide fuel for the work of the Committee of Ministers and of each of our member States. Upholding the principle of living together in harmony in contemporary European societies is a way of ensuring respect for the rights and freedoms of others; it is a way of ensuring that everyone has a voice and is respected, in an on-going spirit of dialogue and compromise, without being obsessed with the opinions of the majority.

At the Parliamentary Assembly of the Council of Europe, I am a member of two committees which closely monitor cultural diversity and human rights: the Committee on Culture, Education and the Media and the Committee on Legal Affairs and Human Rights. As a representative of the French Parliament in the No Hate Parliamentary Alliance, I work closely together with a third committee of which I am, however, not a member: the Committee on Equality and Non-Discrimination. I have recently joined these committees or undertaken to work alongside them because they are at the heart of the fight for equality, diversity and respect for the values and realities which, I believe, are the basis of European identity and which are important to me as a citizen. It is essential to place emphasis on diversity and intercultural dialogue, including on the religious dimension of the latter. Lack of understanding of religious issues and sometimes the absence of religious instruction foster ignorance and distrust of those who are different. This also applies to the on-going debate on the cultural and religious origins of Europe. Does Europe have Christian roots? Yes, it does. Only Christian roots? No. Other religions, including Islam, have also enriched Europe, just as the philosophy of the Enlightenment did. Education plays a fundamental role in building cohesive societies, strengthening human rights and consolidating democratic citizenship.

In 2014 I followed and gave my support to the report on “Identities and diversity within intercultural societies” by the Portuguese parliamentarian, Carlos Costa Neves. In this report the Parliamentary Assembly of the Council of Europe urged member States to recognise the role of different cultures in the building of national identities and of a European identity characterised by diversity, pluralism and respect for human rights. It pointed out that the deep societal changes which had taken place urgently required a rethinking of the processes and mechanisms for combating racism and intolerance. The establishment last year of the No Hate Parliamentary Alliance was influenced by the conclusions drawn in the report. The Alliance set itself 5 priorities to achieve by 2017: fighting online hate speech, anti-Semitism, Islamophobia, 'anti-Gypsyism', homophobia and transphobia. Allow me this morning to mention, not without some emotion, the victims of the homophobic massacre in Orlando and their families. When confronted with bigotry, stupidity and crime, education, the discovery of that which is different and solidarity with others are the best responses. The enhancement of education and cultural policies is essential in making young generations aware of the existence of composite identities. The aim is not only to recognise diversity and to protect it against discrimination, but also to raise awareness of the originality of each and every identity and to encourage multicultural exchanges.

At the end of Carlos Costa Neves' presentation of his report, I suggested extending the discussion to include diaspora and communities of citizens living in other countries than the one whose nationality they hold. Indeed I consider their integration to be of the utmost importance for European societies. In opposition to the fears, the scepticism or the hatred that are being exploited to close down borders or deprive people of their rights, I would make it clear that, these

communities of citizens living abroad are essential links between cultures and can contribute to social cohesion and to the enhancement of pluralism in our societies. They are an asset to both the country of origin and to the country of residence. This is important, particularly for second and third generations of migrants, where young people searching for identity and belonging, have difficulty in identifying with either of the two countries, thus giving them the impression of being excluded and the idea that they are not entitled to the same rights and opportunities, with the risk that this may lead to extremism, fundamentalism and racism. I have been in touch with many associations of citizens living abroad and of diaspora, both large and small. I was impressed by the integration work carried out by a Turkish association in Lorraine. I discovered that it was possible to learn German in Great Britain on Saturdays at schools set up by such associations. I have seen for myself the strength of Portuguese organisations in Europe. I have become convinced that the role of these associations is still not sufficiently recognised and that they are not sufficiently involved in the preparation of national and local strategies to strengthen social cohesion and living together in peace and harmony.

Next week, here in Strasbourg, I will present my report in the Assembly Chamber at the Palais de l'Europe. After more than two years' work, meetings and lectures, I am at last reaching my goal. I hope to obtain the support of my parliamentary colleagues to ensure that my report continues on its journey to you in the capital cities of Council of Europe member States. Progress still needs to be made and I propose that we make that progress together, learning from each other's experience and systematically involving the associations of diaspora in each country of residence in the preparation and implementation of policies concerning all aspects of the process of integration, including education and culture. These associations are not rich. I therefore recommend that financial aid programmes be put in place to help them professionalise their work, develop and consolidate their networks, and carry out joint activities. But each country of residence is also a country of origin where partnerships between universities, schools and organisations of diaspora could be developed to provide practical support for the teaching of mother tongue languages, following the example of the German or Czech Saturday schools. I am convinced that successful integration depends on mastering the language of origin. There is nothing worse than forced assimilation and the imposed denial of a culture to the point of absurdity. I can remember a draft law that was for some time envisaged in Bavaria to forbid families from talking any language other than German, even in their homes. What a crazy idea! Apart from the fact that such a law would have been ridiculous, it would have been impossible to ensure that it was applied without violating people's privacy and consequently the European Convention on Human Rights!

We cannot allow fears, phobia and vote-seeking demagoguery to undermine cultural diversity. The current campaign of *Brexit* supporters in Great Britain alas offers an astonishing array of prejudices that are cynically being encouraged to secure a majority vote on 23 June. No social and political construction can be lasting if it is

based on fear and identity politics. Nostalgia and the rejection of others are not the answer. Belonging and openness are the foundations on which the future can be built. In order to achieve this I would like the Council of Europe to set up a European parliamentary network on diaspora policies. And I also call on the Secretary General to include in the current "Building Cohesive Societies" Action Plan concrete initiatives involving the diaspora in the fields of culture and education. We need to send out these signals. Cultural diversity is an opportunity. I would like to believe that here in this multicultural Europe people from all the many different backgrounds can live together happily and harmoniously. At this point I would like to quote President François Mitterrand, who made the following remark when he was talking about the French at a colloquy on the plurality of cultures: *"We are French (...), a little bit Roman, a little bit Germanic, a little bit Jewish, a little bit Italian, a little bit Spanish, and increasingly Portuguese. And perhaps even Polish? And I wonder if we aren't already a little bit Arab"*. This remark, which he made some 30 years ago, is still incredibly relevant.

Madame Chairman, Madame Deputy Secretary general, Ladies and Gentlemen, these are the thoughts and convictions that I wished to share with you this morning. The Council of Europe has come a long way. It came into being in the aftermath of a world tragedy, which could have carried off everything in its path. The Organisation has passed through perilous times for peace and law but it is still there, agile, mobile and dynamic. It can offer inclusive and humanist solutions for the future of our culturally diverse societies and for the future of our children. It is now more than ever Europeans' greatest asset. And we must encourage it and defend it!

Last week I was in Bratislava for the inauguration of the new site of the French school there. The pupils had great pleasure in presenting a little sketch to illustrate their joint adventure. They sang the Ode to Joy in Slovakian. It was deeply moving. In the front row there was a little Korean girl of 7 or 8 years of age who was singing beautifully. She was smiling all the time. And yet a few months previously she spoke neither Slovakian nor French. Cultural exchange and education had helped her make the leap. I believe that the future of Europe looks like that little girl, with that trusting, serene and peaceful face as she stood in the midst of her friends. Where there is a will, there is a way. And Europe is the outcome of a will – the will to look to the future and to move forward together. So let us move forward.

How freedom of religion or belief can contribute to more diversity in society?

I have the honour to briefly address you in my capacity, as United Nations special reporter, on freedom of religion or belief. Freedom of religion or belief is a human right to freedom that is quite obvious. At the same time, it is also a right to equality, equality and non-discrimination. Some people wonder how equality can be combined with diversity and maybe if you would even assume that there is an inherent tension. The more we work on the behalf of equality, the more that is the understanding we would probably marginalise diversity or the other way around. I think this is wrong; the relationship between equality and diversity is not just an uneasy compromise between pluralistic and anti-pluralistic equality on the one hand and anti-egalitarian diversity on the other hand. No, these principles fit very nicely together because in the context of Human Rights equality never means sameness, same treatment, uniformity, homogeneity. Equality is inherently diversity friendly. So equality would only make sense in the frame of Human Rights as a diverse, friendly equality. Why? In order to answer that question we have to go back to the very root of Human Rights and that is respect for human beings. Let me cite from the preamble of the UDHR, the 1948 mother document of international Human Right protection, the first sentence of the preamble of this first ever international Human Rights document starts with the following words 'Recognition of the inherent dignity and of the equal and inalienable rights of all the members of the Union family'.

So, recognition is the very first word of the first international Human rights document. Recognition of a dignity thought inherent in all human beings, in all members of the Union family. And from that the declaration derives respect for rights, equal rights of everyone. Because, if dignity, if respect for human dignity is supposed to be the point of departure there is no way to measure dignity from outside. I mean, that is the very source of equality in the frame of Human Rights. Equality is something very deep as a profound principle. However, it does not mean that each individual or group should be treated in the same way. First of all, what is essential is the respect for the irreplaceable biography of human beings for their most diverse identity shaping convictions and that brings us back to freedom of religion or belief. In addition, respect for identity shaping deep, deep

seated convictions that human beings thrive as individuals but also together with others, and so in a community frame.

Thus, that is the source of Human Rights and that is also at the basis for making sense of equality. Considering equality in the light of equal respect and irreplaceable diversity and realise of course these principles belong very deeply together. You cannot make sense of equality unless you take diversity into account and vice-versa. The reason for this is that diversity also means respecting everyone in their very personal convictions. One of the test cases for respecting diversity is the treatment of minorities; beliefs related to minorities, sometimes they require some extra attention, some specific sensitivity.

There is always the danger that such an extra attention or sensitivity is mistaken as privileging minorities. Especially right wing populist's movement have the tendency to attack minorities that are seen as privileged. I think there is a misunderstanding given the special attention to certain minorities is not privileging them but it is really taking into account that minorities live very often under very complicated circumstances even in open and pluralistic societies . Very often the standards, by which we measure societal practices, are simply derived from what the majority deems natural. Sometimes it is less in the sense they tend to assume, take things for granted such as certain public holidays or a seven days week. However, they reflect persuasions, heritages of the majority and we are not often aware of what this could mean for minorities and not giving them our attention, listen carefully in order maybe to elevate their situations in respect of their dignity and at the end it is a matter of respecting everyone's equal dignity. Therefore, special attention to minorities, special investments for broadening the space for diversity has nothing to do with privileges. Instead, it derives from sophisticated understanding of what equality demands. Equality is a Human Rights principle, equality finally going back to the source of all Human Rights commitment, respect for inalienable dignity of all members of the Union family. I think this is the task ahead of us and we are working for equality in the sense that it is in the interest of all of us: majorities like minorities.

Dr Petra Roter

President a.i. of the Advisory Committee of the Framework Convention for the Protection of National Minorities

The Framework Convention and the management of diversity

Madam Deputy Secretary-General, let me first thank you on behalf of the Advisory Committee for the opportunity to address this distinguished audience with some thoughts on the importance of the Framework Convention for the Protection of National Minorities for the protection and promotion of human rights in culturally diverse societies. These thoughts are more fully developed in the Advisory Committee's fourth thematic commentary on the scope of application of the Framework Convention. It is entitled: *The Framework Convention: A key tool to managing diversity through minority rights*, and it was adopted just recently, in May 2016.¹

It was not by chance that the Framework Convention was adopted by the Council of Europe Committee of Ministers over two decades ago. It was a result of a carefully balanced and strategic thinking. For it was believed that the protection of minority rights, as integral part of human rights, was the best guarantee effectively to manage diversity in Europe. As the only legally binding document on minority protection, the Framework Convention in its Article 1 thus firmly anchors the rights of persons belonging to national minorities within the universal system of multilaterally recognised human rights. This important step was not taken with a view to challenging the notion of equality among individuals. On the contrary, it was intended to advance the principle of equality further by establishing a set of specific rights for persons belonging to national minorities to ensure their full and equal participation in all societal spheres, while effectively protecting them from assimilation.

For this core goal of the Framework Convention to be achieved, several simultaneous processes are required. In particular:

¹ The Advisory Committee on the Framework Convention for the Protection of National Minorities assists the Committee of Ministers in the monitoring of the implementation of the Convention by states parties. In addition to its country monitoring, it has adopted four thematic commentaries on issues of particular relevance in states parties. The First Commentary on Education under the Framework Convention was adopted in 2006, the Second Commentary on Effective Participation in 2008 and the Third Commentary on Language Rights in 2012. See <http://www.coe.int/en/web/minorities/thematic-commentaries>. The Fourth Thematic Commentary is yet to be made public following its translation into French. Accordingly, this contribution makes no specific reference to the commentary although it relies on its parts.

- 1) persons belonging to national minorities need to have a possibility to express their difference freely (which includes situational and multiple identities) and to enjoy its recognition;
- 2) despite the differences characteristic of persons belonging to national minorities, equal access to rights and resources has to be guaranteed to them; and
- 3) social interaction has to be based on respect and understanding across difference.

As the Framework Convention does not contain a definition of the term national minority, its application in practice has been sometimes mistakenly interpreted as being solely at the discretion of states parties. Such an interpretation is incorrect, not least as it runs counter to the principle of *pacta sunt servanda*. The absence of the definition in the Framework Convention was intentional and wise. Indeed, definitions are delimitations and therefore always bound to a particular time-frame and a particular situation. As societies evolve, however, new minority communities may be forming and new needs may occur. In addition, multiple affiliations are an ever more present phenomenon and this also requires flexibility in approach to managing diversity in contemporary societies: many children of mixed marriage, for instance, feel equally part of both, minority and majority communities and they may avail themselves of some, not all, minority rights. This is fully in line with their right to free self-identification, which can be situational. In other words, the Framework Convention was deliberately designed as a living and dynamic instrument, whose interpretation must be adjusted regularly so that it always reflects the contemporary societal circumstances.

We live in culturally diverse societies, and this evolving diversity also poses new challenges. The Framework Convention is a tool to ensure that the three principles listed above, the right to express difference, the right to effective equality despite difference and the right to be met with respect across difference, can be enjoyed by persons who are in a minority situation and therefore require particular protection of their rights. Societal changes, be it increasing mobility or the increasing presence of multiple identities, must therefore not be the reason for limiting access of individuals to minority rights. In this respect, the key issue in the process of diversity management is therefore not the issue of status of individual groups but access to rights of persons belonging to those groups.

The Advisory Committee has always encouraged state parties to be inclusive and to apply a flexible approach to the personal scope of application of the Framework Convention. This means that state parties should constantly assess –

on an article-by-article basis – which rights should be made available to whom. Such an approach guarantees the most effective implementation of the Framework Convention based on fact rather than on the status of a particular group, to which the individual belongs. Moreover, such an approach promotes a societal climate of dialogue and mutual understanding, where cultural diversity is encouraged and is viewed as a source of enrichment rather than division. We need to remind ourselves yet again that all these principles and the approach to managing diversity through minority rights developed by Council of Europe member states in the early 1990s were not a coincidence. Europe's history has been marked by many violent conflicts, including those manifest conflicts that involved, or were centred around minority issues and minorities – be it religious minorities in the 17th century; or racial, linguistic and religious minorities in the early 20th century; or national minorities in the late 20th century. Indeed, such were the frequency and the intensity of those conflicts that minorities themselves have been perceived as 'a problem'. We know that this superficial shortcut of blaming persons belonging to minorities for instability and conflict is both wrong and harmful for societal relations at different levels, be it sub-national, national or regional.

Europe's violent history therefore always needs to serve as a reminder that those minority-related conflicts typically occurred because persons belonging to minorities were *denied* human rights, including minority rights. Those conflicts occurred because minorities were *perceived as a 'problem'* – were driven to hide their specific identities, were denied equal access to rights or resources, and were met and treated without respect, often on the basis of prejudice. In fact, they have often been viewed as a danger to would-be homogenous (one-nation) societies. Historical evidence clearly shows that it is not access to minority rights but rather its denial that sparks instability and conflicts.

This is what should be borne in mind when states are addressing contemporary forms of diversity, including by guaranteeing access to minority rights. The Framework Convention carefully balances broader societal concerns with individual rights, and it addresses society as a whole. The Framework Convention has not been designed to provide an answer to the 'who question' (i.e. 'who' is a minority and should be protected). Instead, by providing a set of principles, norms and rules on minority protection, ranging from the important basic principles of equality and non-discrimination, to cultural rights, media, language and education rights, and the effective participation of minorities in public life, the Framework Convention serves as a key legal instrument that helps us understand 'what' is required to manage diversity most effectively, through the

protection of minority rights as an integral part of broader human rights. The Framework Convention offers a tool for states to manage also different *contemporary* forms of diversity across Europe by ensuring that minority identity can be expressed and lived without harm. As such, it complements the Guidelines of the Committee of Ministers on the protection and promotion of human rights in culturally diverse societies.

Judge Işıl Karakaş

Vice-President of the European Court of Human Rights

The European Convention on Human Rights and respect for diversity

INTRODUCTION

In its preamble, the European Convention on Human Rights refers to “a common understanding and observance of human rights” and “a common heritage of political traditions, ideals, freedom and the rule of law” of European States.

European human rights law, as developed mainly through the case law of the European Court of Human Rights, has to contend with the fact that there are two conflicting sides to human rights protection: on the one hand, individuals with their right to be different and, on the other, this common ethos that ensures the application of common European standards in the interests of effective human rights protection.

Although the Convention does not explicitly protect cultural rights as such (in contrast to other international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights), the Court, through a dynamic interpretation of the various articles of the Convention, has gradually recognised the existence of substantive rights which may fall within the scope of “cultural rights” in the broad sense of the term.

The European Court of Human Rights has developed a body of case law based on **pluralism, tolerance and broadmindedness**, the hallmarks of a democratic society (*Young, James, Webster v. United Kingdom*, 13 August 1981).

As a result, in today’s multicultural democratic societies, the States are required to respect cultural diversity and also to encourage expression and personal development. The Court has taken the view that “respect for national minorities is a condition *sine qua non* for a democratic society” (*Gorzelik and Others v. Poland*, 17 February 2004).

In its judgments, the Court applies the requirement for pluralism and respect for diversity in a multicultural society while at the same time retaining the common European ethos and heritage. It has laid down the principles of a European public order, while giving a high priority to human dignity and seeking to balance universality with diversity in a democratic society.

In the Grand Chamber’s *Izzettin Doğan and Others v. Turkey* judgment of 26 April 2016, the Court reiterated its view that “Pluralism is also built on genuine recognition of, and respect for, diversity and the dynamics of cultural traditions,

ethnic and cultural identities, religious beliefs and artistic, literary and socio-economic ideas and concepts." (§ 109). The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion (see *Gorzelik and Others v. Poland*, § 92).

Respect for diversity is encountered first and foremost in the field of freedom of expression, freedom of religion, freedom of association, respect for private life and family life and the right to education.

The essential framework for this practice lies in freedom of expression which is a *sine qua non* for participation in intercultural dialogue. In this respect, the *Handyside* judgment remains paramount here, with the protection of ideas that "**offend, shock or disturb**", a consequence of the pluralism, tolerance and broadmindedness characteristic of a democratic society which requires that a balance be achieved "which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position" (*Young, James and Webster v. the United Kingdom*, 13 August 1981, § 63).

1. The right to freedom of religion:

Ever since its judgment in *Kokkinakis v. Greece* (25 May 1993), the Court has taken the view that "*freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned*" and also implies freedom to hold or not to hold religious beliefs and to practise or not to practise a religion.

It can therefore be described as a *Handyside* for Article 9, with the reference to pluralism (§ 31) and respect for everyone's beliefs (§ 24). The role of the States is to ensure that competing groups tolerate each other (*Serif v. Greece*, 14 December 1999). In the context of Article 9, the Court monitors respect for pluralism, the autonomy of religious communities and, of course, the State's duty of neutrality.

Respecting religious diversity undoubtedly presents one of the greatest challenges today, which is why the authorities should regard religious diversity not as a threat but as a source of enrichment (Doğan, § 109).

In this context, although Article 9 secures freedom of religion as an individual right, the Court has recognised that there is a collective dimension, prompting it to scrutinise various aspects of relations between the State and religious communities.

Accordingly, in *İzzettin Doğan and Others v. Turkey*, the Court observed that "*by failing to take any account of the specific needs of the Alevi community, the respondent State has considerably restricted the reach of pluralism, in so far as its*

attitude is irreconcilable with its duty to maintain the true religious pluralism that characterises a democratic society, while remaining neutral and impartial on the basis of objective criteria. In that connection the Court observes that pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions and identities and religious convictions” (§ 178).

In a democratic society based on pluralism and respect for cultural diversity, any difference based on religion or belief must be justified by compelling reasons.

While on the subject of respect of diversity, it is important to point out, however, that Article 9 does not confer absolute protection on the wearing of religious clothing in public. The Court has frequently acknowledged that State interference in the form of prohibitions or restrictions was justified in order to uphold the principles of secularism and gender parity (on the ban on wearing the Islamic headscarf in schools and universities, see *Leyla Şahin v. Turkey* [GC] (No. 44774/98, § 116, ECHR 2005-XI); and *Dogru v. France* (No. 27058/05, § 72, 4 December 2008); in both of these cases, the Court found there had been no violation of Article 9; see, by contrast, *Ahmet Arslan and Others v. Turkey* (No. 41135/98, ECHR 2010-...) in which the Court held that the criminal conviction of members of a religious group for wearing garments consisting of a turban, a black tunic and a stick in public and outside a mosque was in breach of Article 9.

In the case of *S.A.S. v. France* ([GC] 01/07/2014) concerning the ban on the wearing of the full-face veil (burka and niqab) in France, the Court ruled that Law No. 2010-1192 of 11 October 2010 prohibiting the concealment of one’s face in public places was not incompatible with the requirements of Articles 8 and 9 of the Convention. In this respect, the interference constituted by the ban in question pursued the legitimate aims of protecting public security and ensuring “**living together**”, which, in the Court’s view, can be linked to the protection of the rights and freedoms of others – and in other words, to the right to live in a space of socialisation which makes living together easier. Noting firstly that the question of whether or not it should be permitted to wear such clothing constitutes a choice of society and secondly that there is no European consensus on the issue, the Court, which affords national authorities a wide margin of appreciation, found that the interference was proportionate to the aim pursued.

The Court does nevertheless note that the clothing in question “*is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy*” (§ 120).

2. Respect for private and family life

Under Article 8, the Court has acknowledged the existence of a right to lead one’s life in accordance with one’s identity and cultural traditions in cases concerning individuals belonging to the Roma minority (see *Chapman v. the United Kingdom* [GC] (No. 27238/95, ECHR 2001-I).

The Court observed “(...) that there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle (...), not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community” (Chapman, § 93).

In *Winterstein and Others v. France* (No. 27013/07, 17/10/2013), the Court ruled that the decision to expel the applicants, members of the Roma community, from private land that they had been occupying for many years, including before it was classified as a natural zone, was contrary to Article 8 of the Convention. In line with the Chapman judgment, the Court noted that “*the occupation of a caravan is an integral part of the identity of travellers, even where they no longer live a wholly nomadic existence, and that measures affecting the stationing of caravans affect their ability to maintain their identity and to lead a private and family life in accordance with that tradition*” (§ 142).

The Court further observes that the caravans, sheds and bungalows in which the applicants lived, in other words, their traditional dwellings, constituted a home within the meaning of Article 8, regardless of the lawfulness of the occupation. Also, the fact that the occupation of the land had been tolerated by the authorities for many years, the strength of the applicants’ links with their home, the long history of their presence, their vulnerability and the lack of any rehousing solution suited to their traditional way of life led the Court to conclude that there had been a violation of Article 8.

3. The right to education

In *Folgerø and Others v. Norway* (29 June 2007), the Court addressed the issue of the teaching of the Christian faith in schools. The State is required to respect the religious and philosophical convictions of parents throughout the entire State education programme. The State must see to it that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. It is forbidden to pursue an aim of indoctrination (§ 84 h + i).

Likewise, in *Hasan and Eylem Zengin v. Turkey* (9 October 2007), the Court ruled that the refusal by the authorities to exempt a student whose family were followers of Alevism from religious culture classes (compulsory in primary and secondary schools) and the instruction in this subject could not be considered compatible with the principles of objectivity and pluralism (§ 76). In *Mansur Yalçın and Others v. Turkey*, (16/09/2014) the Court noted that “*the Turkish education system offers no appropriate options for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam, and that the very limited procedure for exemption is likely to subject pupils’ parents to a heavy burden and to the necessity of disclosing their religious or philosophical convictions in order to have their children exempted from the lessons in religion*” (§77).

The test applied by the Court in all these cases is the following: the State, in fulfilling the functions assumed by it in regard to education and teaching, must ensure that information or knowledge included in the curriculum is conveyed in an **objective, critical and pluralistic manner**.

4. Freedom of association: participation in public life

Effective participation in political life is essential for a democratic society. It is the freedom to found political parties and associations based on minority identities. Broadly speaking, it can be said that asserting a minority consciousness is not an appropriate ground for justifying prohibition (*Bekir-Ousta v. Greece*, 11 October 2007 § 36).

As regards associations which seek to promote a minority culture, the Court has taken the view that "*territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region's culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a 'democratic society' had to tolerate and even protect and support according to the principles of international law*" (*Sidiropoulos and Others v. Greece*, 10 July 1998; *Emin and Others v. Greece*, 27 March 2008).

In line with these principles, the Court has stated that the right to express one's views through freedom of association and the notion of personal autonomy underlie the right of everyone to express, in a lawful context, their beliefs about their ethnic identity (see *Tourkiki Enosi Xanthis and Others v. Greece*, No. 26698/05, § 56, 27 March 2008).

CONCLUSION

The judgments handed down by the Court go to the heart of the concept of the growing cultural diversity of European societies. "*Democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position*" (*Folgerø*, § 84 (f), *Young, James and Webster*, § 63).

Today, for the 47 member states of the Council of Europe and 800 million Europeans, the Convention is a fully-fledged component of European identity. When it comes to matters concerning the confrontation between the majority and the minority, the task of the Court is not always an easy one. Introducing common European standards goes hand in hand with recognising and respecting cultural diversity in the interests of better human rights protection. Member states should strive to secure the conditions whereby individuals can live together in their diversity, that is to say in a democratic society based on pluralism, tolerance and broadmindedness, as envisaged in the "Guidelines of

the Committee of Ministers to member states on the protection and promotion of human rights in culturally diverse societies” of 2 March 2016.

In today’s multicultural democratic society, **diversity should not be “perceived as a threat but as a source of enrichment”** (*Timishev v. Russia*, 13 December 2005, § 56).

Mr Philippe Wéry

Former Chair of the Committee of Experts for the Development of Human Rights (DH-DEV)

Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies – The past work of the CDDH

It is up to me – because the main course will arrive in ten minutes - to whet your appetite by describing the work carried out between 2003 and 2009 by the Steering Committee for Human Rights (the CDDH) and its subordinate committee (the DH-DEV) in the area of “culturally diverse societies”.

Following this brief look back, I will give the floor to our colleague, Krista Oinonen, who has continued the work in this area.

After the “*Conference on Fundamental Rights in a Pluralistic Society*”, organised in The Hague in November 2003, the CDDH held regular exchanges of views on the theme of “human rights in a multicultural society”. Its subordinate committee was then given the task of examining issues related to respect for human rights in a multicultural society, giving priority to the questions of hate speech and the wearing of religious symbols in public areas.

Let us recall for a few moments the political context which prevailed at that time.

Several terrorist attacks had taken place in the United States and in European countries (Madrid in 2004 – London in 2005). There was a realisation that forced marriages, so-called “honour” crimes and genital mutilation were occurring in the heart of Europe.

Integration policies were a focus of debate, fuelled by a series of events: the murder of Theo van Gogh in 2004 in the Netherlands, the violent reactions to the publication of caricatures of the prophet Mohammed or the controversy surrounding the wearing of religious symbols in schools.

The issue of integration – and the word multiculturalism itself – were also a matter for debate; some saw it as the promise of a diverse but harmonious society. Others, as a threat to social cohesion, with the risk of ghettoised societies.

“Culturally diverse societies” were superseding “assimilation” (which referred to a concept subordinating the interests of the minority to those of the majority) and “communitarianism” (which referred to a concept of society based on a

separation between the majority and the minority, with the risk of isolating minority cultures and communities by stigmatising them).

The Council of Europe's White Paper on Intercultural Dialogue of 2008 was in tune with the times, since its theme was "intercultural dialogue".

Our work would both:

- Consider the different groups as *fully fledged components of European societies* and indicate that diversity is a source of enrichment.
- Consider that accepting diversity should not lead to the disintegration and alienation of the "*common heritage of political traditions, ideals, freedom and the rule of law*" mentioned in the preamble to the Convention. Some practices can never be justified by invoking culture, religion, custom or traditions. Reconciliation of respect for diverse identities and the development of social cohesion is possible only if it is underpinned by universally recognised human rights and fundamental freedoms.

So, what did we do?

We drafted three documents: two manuals and a Declaration by the Committee of Ministers.

- **The manuals on "hate speech" and on "the wearing of religious symbols in public areas"** are aimed at public authorities and policy makers.

They contain an overview of relevant international human rights standards and a list of assessment criteria deriving from them, in order to allow a balance between the different rights and interests at stake. These manuals do not attempt to set out new standards or to recommend good practices.

In order to determine what constitutes "hate speech", we had to look at the boundaries of freedom of expression. Freedom of expression, which plays an essential role in a democratic society, protects not only opinions which are favourably received or which meet with indifference, but also those which "offend, shock or disturb". Its enjoyment carries with it duties and responsibilities and may be restricted under certain conditions, listed in paragraph 2 of Article 10 of the Convention.

Drawing on the Court's case law, the manual deals with "general principles" relating to freedom of expression and restrictions thereto. Within this framework, the question of the content and context of the expression at issue was examined. The manual also aims to be a source of inspiration by giving some examples of good practice in member States.

In the manual on the “wearing of religious symbols in public areas” it is pointed out that, although the right to freedom of thought, conscience and religion is, as such, absolute, the freedom to manifest one’s religion or beliefs may be subject to limitations (Article 9§2 of the Convention). The challenge for authorities is to be able to strike a fair balance between the interest of individuals as members of a community to see their right to manifest their religion or their right to education respected and the general public interest or the rights and interests of others.

The two manuals were launched in November 2008 on the occasion of the Conference “*Human Rights in Culturally Diverse Societies: Challenges and Perspectives*”, which aimed to help develop approaches to human rights policies focused on improved management of the growing cultural diversity in Europe.

In the wake of that conference, the Committee of Experts (DH-DEV) was given the task, in the light of its results, of examining different follow-up possibilities and drawing up relevant proposals within that framework.

In spring 2009, the Committee prepared for the Committee of Ministers a “**Declaration**” on “**human rights in culturally diverse societies**” in order to:

- Send a “strong political message” to Council of Europe member States
- Emphasise that diversity is a reality, a dynamic phenomenon
- Note that all States are confronted with the same challenges
- Indicate that diversity has positive effects,

Through and in the declaration we reaffirm among other things that:

- Human rights are universal, indivisible, interdependent and interrelated;
- They constitute a framework of common values which enable the integration of diversity;
- States must guarantee their effective enjoyment;
- Opinion leaders must foster a climate of respect and dialogue based on a common understanding of universally recognised human rights;
- It is important to prohibit discrimination and racism;
- Freedom of expression, assembly and association as well as freedom of conscience and religion are among the foundations of democratic societies and are essential for the pluralism which characterises them.

I will conclude with a very important aspect of our work: in the area of the harmonious coexistence of culturally diverse societies, more than in other areas, rights can come into competition. In the event that such a *competition among rights exists, it is important that “States strike a fair balance between the different rights and interests at stake, notably by ensuring that restrictions are prescribed by*

law, necessary in a democratic society and proportionate to the legitimate aim sought”.

The DH-DEV had not envisaged that its work on this theme would end with the adoption of the Declaration. On the contrary, one of the options for future work was to draw up guidelines based on relevant case law, which could serve as a basis and a source of inspiration for member States in their efforts to take legislative or other measures.

Ms Krista Oinonen

Former Chairperson of the Drafting Group on Human Rights in Culturally Diverse Societies (CDDH-DC)

General presentation of the Committee of Ministers' Guidelines to member States on the protection and promotion of human rights in culturally diverse societies

- I'm very pleased to present the Guidelines on human rights in culturally diverse societies.
- All human beings are born free and equal in dignity and rights. Human rights are generally regarded as universal, indivisible, interdependent and interrelated.
- However, sometimes, in a culturally diverse context, there may be a need to strike a fair balance between different rights. On the one hand, none of these rights should be set aside due to cultural or religious practices or customs. On the other hand, it may sometimes be necessary to allow for differential treatment or for appropriate exceptions in order to accommodate diversity.
- The Council of Europe has a comprehensive set of human rights standards, both hard law and soft law, but it is still challenging to ensure the effective implementation of them. These challenges are well illustrated in the Secretary General's annual reports on the state of democracy, human rights and the rule of law in Europe.
- As we have just heard, the Guidelines are a result of the work undertaken by the Steering Committee for Human Rights in past years. The Declaration on human rights in culturally diverse societies was adopted by the Committee of Ministers in 2009.
- The Steering Committee for Human Rights adopted a [study of existing instruments](#) in the field of human rights in culturally diverse societies in 2012, as well as a [study on the feasibility and the added value of new activities](#) in this field in 2013.
- Against this background, the Committee of Ministers decided to continue considering this topic and the Steering Committee established a drafting group in the end of 2013.
- I was privileged to chair the drafting group and work with extremely committed and competent national experts who all contributed to the

draft in a very constructive manner. The CDDH Secretariat provided solid, substantive support throughout the drafting process.

- I am very pleased that also the Holy See and Mexico attended the meetings. In our last meeting we had a representative from the Council of Europe's Neighbourhood Partnership Programme, Morocco. Three key-note speakers contributed to our work.
- When we started our work many considered that the given mandate was "a mission impossible" and that the European reality made it even harder.
- Everytime I declared the drafting group's meeting opened, Europe had changed. During this drafting exercise of two years we witnessed an unprecedented influx of migrants, economic hardship and shocking acts of terrorism. We read alarming reports about a growing problem of incitement to violence, hate speech, xenophobia and extremism. These events were a heavy burden on our shoulders but, at the same time, a powerful impulse for action.
- We decided that our guiding light was the following: **European societies are increasingly diverse and that diversity should be perceived as a source of enrichment.**
- Our focus was **the freedom of thought, conscience and religion** which as such is a very sensitive topic in many, if not in all, Member States.

COMPILATION OF EUROPEAN STANDARDS

- First we explored all European human rights standards relevant to the protection of human rights in culturally diverse societies. This task alone was enormous.
- This was also an adventure – in the beginning we were not sure what to find when exploring the wide variety of standards and whether the preliminary structure would serve the purpose, that is to match with the standards compiled.
- We agreed that our work should mainly be based on the relevant case-law of the European Court of Human Rights but also, whenever appropriate, have a look at principles emerging from other Council of Europe and international bodies. The UN treaties, declarations and resolutions as well as the findings, conclusions and recommendations adopted by the UN treaty-based and Charter-based human rights mechanisms provided rich sources.

- We agreed that account should be taken of “The Ljubljana Guidelines on integration of Diverse Societies” published by OSCE in 2012.
- The compilation of standards is being published together with the Guidelines and available here in the room. I am very pleased that the Secretary-General wrote the foreword for the publication. This is much appreciated.

SELECTION OF GOOD PRACTICES

- We also requested Member States to submit examples of good practices on how these European standards have been implemented. We received a good number of examples, 150 pages altogether. A selection of these practices is annexed to the compilation.
- Roughly I would say that these good examples have 3 main categories (1) **legislation** (constitution, acts and decrees, other regulations); (2) **policies** (this includes plans of action to combat discrimination, hate speech, campaigns, etc.) and (3) **infrastructure** (bodies and mechanisms established, such as platforms for interfaith dialogue, advisory boards, etc.)
- I encourage all Member States to keep sharing their good practices. I also hope that the Council of Europe could keep compiling these practices and publish these inspiring examples on its website.

GUIDELINES

- As regards the guidelines, it was strongly emphasized in the drafting group that **our mandate was to focus on the implementation of the existing standards, not to create any new ones.**
- The Guidelines should support the Member States and also other stakeholders in their efforts to implement the standards. As regards other stakeholders references were made to local and regional governments as well as civil society and individuals.
- It is always challenging when a bunch of lawyers is trying to create a user-friendly document but we tried to do our best.
- All paragraphs are based on or draw inspiration from an existing agreed language whether it is a hard law or soft law standard.

- As regards the content of the guidelines, we have a preamble and 9 Chapters
 - ✓ **general principles**, such as obligation to respect human rights, margin of appreciation, living together, and so on
 - ✓ **fundamental freedoms** (religion, expression, assembly and association)
 - ✓ **equality and non-discrimination** (equality between men and women, multiple discrimination)
 - ✓ **countering hatred and violence** (stereotypes, hate crime and speech, and so on)
 - ✓ **participation, social inclusion and dialogue** (youth, inclusion of foreign residents, intercultural dialogue)
 - ✓ **safeguards and remedies** (access to rights, access to justice, sharing the burden of proof)
 - ✓ **other relevant actors** (NHRIs, civil society, media, opinion leaders)
 - ✓ **education and awareness-raising**
 - ✓ **other measures** (national strategies, indicators, action plans, human rights education and awareness-raising)

- The draft contains also so called developing concepts formulated in a user-friendly manner. We have taken on board, for example, sharing of the burden of proof, the concepts of living together and multiple discrimination.

- Some of the concepts are progressive ones, such as reasonable accommodation in the context of freedom of religion. We are already used to reasonable accommodation in the context of the rights of persons with disabilities but just analyzing how to use it in the context of religion and belief. These kinds of concepts require a new mindset, new type of thinking, also some good will. However, more careful studying reveals that A LOT OF THIS IS ALREADY OUT THERE; it may be that we are discussing same issue with a different wording.

- Therefore the guidelines provide flexibility by recognizing the need to take into consideration the significance of national and regional particularities and to apply the margin of appreciation.

- There are also challenging topics, such as the responsibility of opinion leaders and the media and the dissolution of organisations promoting hatred, and these were thoroughly discussed.

- All elements of the guidelines were thoroughly discussed in the drafting group, the Steering Committee, the Rapporteur Group on Human Rights and, finally, the Committee of Ministers.

- I do hope that they will enjoy broad acceptance and prove to be a useful tool in the implementation of the human rights standards in culturally diverse societies.
- As the he drafting group proposed and subsequently the Committee of Ministers adopted, there should be follow-up to the guidelines five years after their adoption.
- The Guidelines are of relevance also beyond Europe where many countries encounter similar challenges as those in the Council of Europe's Member States. The Guidelines take into account international standards such as the United Nations' treaties, declarations, resolutions and plans of actions and in particular the work of the Special Rapporteur on the freedom of religion or belief.
- These guidelines should not be seen as an end of the work but, on the contrary, the beginning of the work. Human rights in culturally diverse societies provide a very broad umbrella which cover several issues pertinent to the Council of Europe's mandate and forthcoming work.
- Finally, I would like to encourage all Member States to translate the Guidelines into their national languages. I hope that the Council of Europe will post these language versions on its website for broader use and inspiration.

Ambassador Guido Bellati-Ceccoli

*Permanent Representative of San Marino and Chair of the Rapporteur Group on Human Rights
(GR-H)*

Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies- Procedure for adoption by the Committee of Ministers

First of all I would like to respond to what you have just said about translations. Indeed, you were talking about the very important translation of the White Paper into languages such as Arabic and Hebrew. The idea of drafting guidelines is particularly meaningful in the context of the neighbourhood policy which was set in motion in the wake of the Arab Spring in 2011.

Several speakers have already talked about the content of the guidelines and I therefore do not intend to go into any detail today. I would simply like to briefly mention the discussions which have taken place in the Rapporteur Group on Human rights, the GR-H, a subsidiary group of the Committee of Ministers which I have been chairing since last January.

Work on these guidelines dates back several years and progressed well within the Committee of Ministers. Our work was part of the final stage of the guidelines, which led to their examination by the Ministers' Deputies and their adoption on 2 March 2016. This was a sensitive matter and each country has been responsible for its own translations and its own ideas on the subject.

Passionate debates took place in the GR-H with a view to improving our common definition and understanding of "living together". People often talk about "European culture", for it is true that there is a relatively high level of homogeneity in Europe. We are not talking about cultural relativism, like that which can be seen at global level, for example in the United Nations where the situation is more diverse and therefore sometimes difficult to manage.

In Europe we have a common vision, but there are differences in traditions and approaches and these differences must be respected.

The discussions gave us the opportunity to take a look at fundamental issues which mark the everyday lives of European citizens. We also had the opportunity to study, from both the legal and political standpoint, the ins and outs of complex issues such as a problem that has just been mentioned:

- The dividing line between freedom of expression, which we encourage and protect, and hate speech, which we have outlawed. The question was how do we strike a balance and set appropriate limits.
- How can we define equality, non-discrimination, freedom of conscience and religion, intercultural dialogue, the role of the media and of civil society, without losing sight of the objective of inclusion and social cohesion with all due respect for the identity and difference of every person. Recognition of these assets is the basis of democratic society.

In this debate, we had to show that we were up to the task and account had to be taken of all the work done by the Council of Europe, which has for a very long time upheld and promoted human rights at several levels.

I am obviously referring to the contribution made by the European Court of Human Rights and by all other stakeholders who contributed to our discussions on these points, given us an insight into past developments up to the present day.

We adopted a dynamic approach and we endorse what the Vice-President of the Court has just said, even if such cultural rights are not expressly enshrined in the European Human Rights Convention. The Court's case-law evolves while taking account of changes in society and the fundamental principle of respect for pluralism has become an essential aspect of democratic societies.

This is something which is now clearly affirmed in the Court's judgments. Our societies have changed profoundly over the last few decades as a result of the Internet, migration and minority rights.

Our societies have become increasingly multicultural and multi-faith, in short increasingly diverse. These guidelines are tools which will help us to confront the social changes that are continuing to take place and to continue to take this dynamic approach. We must manage these changes in the light of our fundamental values. The guidelines were adopted by Committee of Ministers in a spirit of compromise between the delegations. I would like to take this opportunity to pay tribute to the constructive attitude adopted from the outset right up to the final stage of the adoption of the guidelines.

In conclusion, I wish to underline the remarkable support provided by the Secretariat, to whom I would like to express our considerable gratitude. These members, who have in-depth knowledge of this field, made an essential contribution and helped us to reach a satisfactory conclusion. The work is never finished and we still have much to do.

Mr Mathias Möschel

Associate Professor, Acting Chair of the Comparative Constitutional Law Programme, Central European University, Budapest

Direct discrimination, indirect discrimination and harassment

Thank you for inviting me to speak at this very important event. It is an honour and pleasure to be here with you and share some thoughts on these three concepts that are crucial to understand anti-discrimination law: direct discrimination, indirect discrimination and harassment. I'll just start very briefly and without reading out one of the definitions of one of the binding instruments of the European Union on discrimination, mainly direct discrimination when the measure, practice, or legislative provision distinguishes on the basis of one of the prohibited grounds. I am using the race equality directive as an example and more precisely race discrimination and racism. Thus, when you have direct differential treatment on the basis of race or ethnicity we can notice this is when the measure of differences of practices, actually on its face neutral, does not seem to make any kind of distinction on the basis of race and ethnicity but has disproportionate impact on people from a different ethnic background.

The one difference that you can also see from this definition here is that indirect discrimination, at least under EU law can be objectively justified. This is an important difference because once you look at other instruments and I am mentioning here the European Commission against racism and intolerance from the Council of Europe, it does use the same distinctions of direct and indirect discrimination however in that definition both of them can be objectively justified.

Direct discrimination and indirect discrimination can be justified (I should mention recommendation number 7), without going into the details here the European convention of human rights, article number 14 has been developed before that distinction between direct and indirect discrimination had been introduced. Evidently there is no or little mention of this distinction but in the court's jurisprudence that type of distinction has been introduced slowly but surely over the years. Nonetheless, there is again the difference that is important whether the discrimination or the distinction made by the legislature in this case here can be justified or is not justifiable.

Very briefly some cases: *Nachova v Bulgaria* anti-roma violence case. Here what was important is that the court said that race discrimination can never be justified, the court took a very strong position stating that discrimination can never be justified but other cases don't follow up in this kind of treatment.

It is interesting to see what is going on with the issue of justifying racial distinction or racial impact. *DH* and other cases, was the first time the court explicitly included indirect discrimination in its own jurisprudence. That is the reason why this case is so important and additionally because of the outcome itself, the first time that the court made the distinction, these were similarly neutral provisions where romani children, the vast majority, ended up in special education classes so this is why this case is listed here.

Sampanis and Others v. Greece so the court has some difficulty to understand the difference between direct and indirect discrimination, they created separated classes only for roma children and the court still said this is indirect discrimination, doctrinal unclarity in the court jurisprudence. The court did find a violation but did not say that it was direct discrimination even if there was a difference made on the basis of ethnicity.

Stoica v Romania is another very important case concerning anti-roma violence. The difference with the *Nachova* case on discrimination is that the court was very reluctant to find a full substantial violation. It concerned police violence on roma individuals in these countries. In *Nachova* we only find a procedural violation in article 14, meaning that the State had not sufficiently looked into the racist background in its investigations though the fact was that the violations went on, but they didn't find that the police itself actually acted based on race and race discrimination. Thus, this is what the court did in *Stoica*, unfortunately this is a very isolated case. The court very rarely goes in that direction in finding full article 3 and article 14 violations, in these race violence cases.

Last but not least, on the court jurisprudence *Biao v Denmark* a very recent decision, very grand scheme decision two weeks ago. It is the first time it uses indirect race discrimination outside of the roma education segregation cases and it does so in the context of immigration family reunification legislation. This is a very crucial point where we see the concept of indirect discrimination moving to the reality of immigration and family reunification rules. More over the court in this case and especially the judge Pinto de Albuquerque, indicates very clearly that no form of race discrimination whether direct or indirect can be justified. With regards to question of justification, this rule was established for security reason; if there is a direct or indirect differential treatment the court will hold that

there is no justification possible except for positive discrimination or positive action. Those measures should be justifiable at least from the judge Pinto de Albuquerque's concurring opinion. It is a very important case on the development of the court itself clearing up a little bit the difference between indirect or direct discrimination.

The central element that I wanted to talk about here though is the issue of racial harassment and harassment. Here again, the definition from the EU directive 2000/43 is often an overlooked concept in anti-discrimination law. This is the definition that is provided by the instrument itself and even the ECRI recommendation that I mentioned before. It does mention harassment but not as one of these central elements of race discrimination. Why do I say central? I think national case law gives you some idea of how far we could go with the issue of racial harassment, should we mention that these provisions have been imported from the gender jurisprudence on sexual harassment in the work place and it has worked itself into directive 2000/43 which also applies outside of the workplace. In my opinion, the potential of racial harassment has been used in different areas.

Furthermore, I mentioned one case from the Tribunale ordinario di Roma where you had a teaching manual for inspiring Italian lawyers and the definition and the explanation/ explanatory comments for the crime of products of suspicious origins. So meaning if you buy or acquire goods that have a suspicious origin, that might have been stolen, you are also committing a crime. When they explained this they meant that if you buy something expensive from someone who is a notorious thief or for someone who is a gypsy, you might be subject to that crime. The court ruled against it saying racial stereotyping, racial harassment, could go very far. Especially in the case of Turkey where there is stereotypical language and anti roma discrimination. Two others cases: Tribunale ordinario di brescia and Kuria concerning discriminatory statements made by politicians (local mayor and La Lega Nord). Both cases mention harassment outside of the employment domain statements and intervention on the basis of racial discrimination.

The last one, Oberster Gerichtshof case, concerning an employer who fired a woman of Polish origins, used what they call in German, 'Belästigung', as one of these criteria for using harassment provisions. So I want to highlight the literature and the potential of racial harassment as of compassing a number of broad provisions going on in Europe, going from racial profiling to a number of issues where racial harassment can be used. In a number of ways that are much consistent from what we have seen so far.

Also, another concept is discrimination by association: a very important case Nikolova in Bulgaria, in a roma neighbourhood where an electricity company put meters out of reach only in this neighbourhood. The woman who did not have any roma origins claimed discrimination not because she was actually from roma but she was associated with them because she lived in this neighbourhood. This is a case of indirect discrimination violation. An interesting case because the court did not choose to use either kind of solution but a step by step looking first if it is a direct discrimination case or indirect, they are still developments.

Last but not least, reasonable accommodation might be potential in the European setting but far more recognised for disability but question might be potential and some kind of use for religious discrimination and recognition of religious practices. So far the other directive 2078 recognises it only for disability in the employment context.

Ms Snježana Vasiljević

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Multiple discriminations

Good afternoon everybody, it is my great pleasure and I have to thank the organization for inviting me for the second time to the Council of Europe to discuss multiple discriminations which is currently not recognized in legal practices.

It is stressed a couple of times in legal researches by academics, judges in European Union states and Council of Europe member states. I have to say that I am really happy that these guidelines on Human Rights in cultural diverse societies incorporated the concept of multi-discrimination. This is the first time within the framework of the Council of Europe that we have something which is close to the prohibition of multi discrimination.

I am a legal scholar; my PHD was about multiple discriminations. I spent more than five years investigating why multiple discriminations should be recognized by the legal framework in the European countries but also in the whole world. The current European legal framework does not recognize intersectionality of different characteristics, such as gender, age, visibility, ethnicity or even sexual orientation which is quite recognized in the last couple of years. The possibility that all these grounds can intersect with each other, create multiple discriminations in terms of recognizing multiple identities of human beings.

Multiple discriminations was for the first time recognized in the United States by the American legal scholar Kimberley Crenshaw. She is Professor of critical race theory and intersectional discrimination at the Columbia law school and University of California, Los Angeles. In 1989, she wrote an article about multiple discriminations. However, that topic occurred during the presidential election of 2008. The professor was then interviewed for the New York Times about the Democrats' presidential candidates Obama and Hillary Clinton. Kimberley Crenshaw is a black woman, she was asked for whom she supposed to vote for during these elections. She asked herself should I vote as a woman or as a black woman. Since then, the theory on multiple discriminations was fully recognized in the legal arena of the United States and also legal scholars in the European Union decided to say more about this issue.

As a legal fellow of the Center of European legal studies at Columbia University in 2008 I became interested in that topic. I wrote a couple of articles and books on the topic, trying to recognize the problem of multiple discriminations in the European Union territory. This is how I discovered the problems' of roma women, migrant women in European countries and also other issues such as ethnic rapes in the territory of former Yugoslavia. These are issues which were recognized for the first time in the territory of the European Union.

If you look at the theory of discrimination, I notice that the first problem is recognizing multiple discriminations as such. My colleague Mathias already mentioned that in the European Union legal framework we have distinctions such as direct and indirect discrimination and sexual harassment or other forms of harassment. Unfortunately, there is no definition of multiple discriminations. One of the reasons concerns the theory on discrimination. We can observe, that the feminist theory does not discuss multiple identities, multiple discriminations or intersectionality. On the other hand, black feminist theory which is a critical discourse theory mentions how black women were neglected from the feminist theory. In other words, the feminist theory is written from the point of view of white women. So black women, migrant women or ethnic women or even lesbian women are neglected in that part of the theory.

The third part of the theories is the theory of difference, which is intersectional experiences of women such as forced sterilization, ethnic rapes or honor crimes which are recognized under the legal arena. In terms of definition there is a kind of confusion on what multiple discriminations actually means. In short, discriminations on more than one ground, combinations of discriminations on different grounds and discriminations on combined grounds. Thus, multiple discriminations as a term is applied as an umbrella term for all situations where discriminations occur on more than one ground. So, definitions and several meanings can have three different forms. For instance, ethnic minority women may experience discriminations on the basis of their gender in one situation and because of their ethnic origins in another.

Secondly, compound discrimination may happen if an employer sets up a series of requirements such as age, working experience, good English and let's say nationality or citizenship. There are complex sorts of criteria with one system of evaluation and rating. Finally, the candidate did not get a job. Even if there is a lack of one factor, it does not prevent the candidate getting the job but it does make it less likely. So, the lack of two requirements decreases further his chances of getting the job.

Furthermore, we will discuss intersectional discrimination. We can use as an example the situation of a roma woman who did not get a vacant job and she claims discriminations against the employer on the grounds of her gender and ethnicity. This is something which is called intersectional discrimination.

What happens in practice is:

-I am a Muslim woman working as a legal advisor, I aspire to become a judge.

-I refuse to leave the labor market because of my age and leg impairment.

- I am a deaf gay man and I want to be a father.

The problem in practice is that the current legal frameworks only recognize discrimination in general. There is no definition on multiple discriminations, only CEDAW mentioned that state parties need to take temporary special measures to eliminate such multiple forms of discriminations. The European convention of Human Rights has general prohibition on discrimination with open -ended clauses. The European Court on human rights does not recognize multiple discriminations as such even though there were some cases in which in my opinion the court could have recognized multiple discriminations.

Fortunately, Council of Europe guidelines on Human Rights in cultural diverse societies recognize multiple discriminations. Concerning the other international documents such as the Istanbul convention which is highly relevant it does not recognize multiple discriminations but contains the so called open- ended clauses, with twenty protected characteristics including, which is interesting, migrants and refugees or marital status.

Another highly relevant document for European Union members is The European Charter on fundamental rights. Again, it does not recognize multiple discriminations but it recognizes the non-discrimination principle by acknowledging different protected characteristics. Nonetheless, it contains a so called exhaustive list of protected characteristics unlike the article 14 of Human rights which contains an open-ended clause.

Accordingly to this definition or the international and European legal framework, multi discrimination still remains invisible. In practice, European courts and national courts recognise a single axis approach, with only one visible protected characteristic. Yet, the European secondary law such as the racial equality directive is the only source in European law that recognises multiple

discriminations. In spite of that, they only recognise it as a general term that can be found in the preamble.

As a lawyer, it is possible to read the EU legal framework in a way where we can interpret the definition by using the so called theological legal interpretation. That it is to say, it is not necessary to provide the full definition of multiple discriminations. In fact, if you have a definition of discrimination which contains prohibitions on discriminations on different protected grounds, you can use a so called open- ended clause at the end. It is useful to add more protected characteristics and combine more protected characteristics in cases of intersectional discrimination.

The problem with multiple discriminations is its inconsistent implementation of antidiscrimination law in European countries and the so called hierarchy of equality. Indeed, most of the time we think of gender, race or ethnicity, but we tend to forget women with disabilities, lesbian women or gay men.

During my research I discussed the issue of equality mechanism in terms of division of power and recognition of different forms of discrimination. Additionally, I noticed that there is no unified data collection and no unique antidiscrimination policy in all European countries. In the end there is no effective remedy for multiple discriminations. A limitation for the third implication of multiple discriminations is definitely a lack of research, lack of appropriate legal frameworks and lack of raising awareness. So what can we do? The solution is raising awareness, improving education, rethinking minorities and women quotas in politics, rethinking regulation within the private sector.

Finally, is the definition of multiple discriminations necessary? In my opinion, I believe it will solve the problem of different experiences not only as a woman but as a man in general, all human beings. The current legal framework is not sufficient for prohibition of different forms of discriminations in the future and the sanctions they imply. Indeed, the real dilemma is that sanctions should be more appropriate; this way the required sanctions could be greater than what they would have been if the discrimination had related to just one of the protected grounds. For instance, multiple discriminations must carry higher penalties than single discriminations.

To conclude, with recommendations I already pointed out above: foster researcher, rethink the current legal framework, education and training. Additionally encourage reporting, because a lot of women are afraid to report discrimination especially multiple discrimination, data collection and promotion of good practice. So, I believe that there is a lot to be done in order to solve the problems of different forms of discriminations and multiple discriminations should definitely be on the table when discussing the issue of cultural diversity and protection of Human Rights.

Dr. Dorota Anna Gozdecka

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Effective equality

Firstly, I want to thank the Council of Europe for inviting me here. It is a great pleasure and honour to address you here today both as an academic who has a chance to share her work and as a European coming briefly home from another continent. Being here feels profound and somewhat intimate. It is intimate for a European to come back home and intuitively slip into the comfort of taking some things for granted – we do not think much of human rights and equality – we know they are there when we need them. They are deeply rooted in our democratic consciousness as mechanisms we know we can rely on against excesses of power. Rights talk is a part of colloquial vocabulary: - we say things, like “I have the right to” or “surely it is within my right to” without thinking much what a right means or how we as Europeans got these rights in the first place. We also have a hard time imagining them not being there. Thus it is indeed intimate to come home and feel slipping subconsciously into that certainty of rights and basic guarantees... something that I have learnt is truly unique in the world. “The rights can’t be waived or taken away” I tell my Australian students “unless the Parliament explicitly intends to legislate otherwise”... Something a European student would have a hard time understanding. Are not rights there to prevent the Parliaments to have such an extreme and unlimited discretion? Aren’t there special conditions that must be met by anyone trying to limit them? Indeed as Europeans, we speak of, exercise and think of democracy through the language of rights. Ever since the concept of a right was included in the French Declaration of the Rights of Man and Citizen, or as many would argue even earlier beginning from the Magna Carta², rights have had a profound effect on how we think of the state, constitutionality and the relationship between the governing and the governed.

But being here also feels profound. It feels profound, because we are here today not only to be self-congratulatory, but also to admit that perhaps there is still something in the concept of rights that we have overlooked or at least have not paid enough attention to. It is profound to look deep inside ourselves and admit that perhaps we do need to work more on our own further self-improvement. It is easy to see the flaws in others, but it is a profound moment when we look in the mirror and see those flaws in ourselves. Profound and perhaps even terrifying – opening up many challenges. My speech will therefore be about challenges.

² Fields, A. B., & Narr, W. D. (1992). Human rights as a holistic concept. *Human Rights Quarterly*, 14(1), 1-20.

I was invited here to speak of effective equality – something that I believe has been a challenge for Europe and many European systems of rights. The concept of equality has of course been deeply engrained in our complex system of rights. We believe all should enjoy equal rights and we have enshrined protection from discrimination in our legal foundations. The European Convention bans the discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This has been interpreted as including direct and indirect discrimination. This ban implies that we are all to be treated the same, regardless of our socio-political background and biological features. The pledge of equality has thus always been Europe's mantra.

Is there then any problem with the concept? At first glance the idea is perfectly reasonable. It does not privilege anyone and it does not create barriers for anyone. Even those actions equal only on the surface that target a specific group should not be allowed. Where are the challenges then, you may ask?

Speaking of the challenges we can return to history for a moment. I have earlier referred to the foundations of our rights. We all know that the Declaration of the Rights of Man and Citizen begins profoundly with declaring all men free and equal³ – a statement revolutionary in its time. But few realise that that declaration of equality did not cover women. Even fewer ever heard of the **The Declaration of the Rights of Woman and the Female Citizen** drafted by Olympe de Gouges in 1791⁴, which begins with words: 'Women are born free and remain equal to man in rights'. The very need of phrasing that declaration suggests that equality can be easily fought in the name of those whom we consider best representing the normative ideal of a subject of rights. We need not go as far back though. Discriminatory practices of apartheid, civil rights movement fighting racism in the US all symbolise a struggle for shattering the glass ceilings and challenging the criteria through which we classify some as deserving equality and others as not being quite fit to benefit from generosity of our rights.

But are we, the Europeans of today free from the sin of classifying some as more or less deserving equality? After all the ban on non-discrimination is broad including all imaginable grounds on which we could declare some better than others. But many scholars have examined the normative ideals of our notion of equality and rights have found that our image of who is the subject of those rights still is based on the image of a typical European with European history, heritage, appearance, religion and culture⁵. In words of Richard Rorty, in practice

³ *Declaration of the Right of Man and the Citizen*, 26 August 1789, Article I.

⁴ O. de Gouges, *Declaration of the Rights of Woman and of the Woman-Citizen*, 1791.

⁵ E.g., Rancière, J. (2004). Who is the Subject of the Rights of Man?. *The South Atlantic Quarterly*, 103(2), 297-310; R. Rorty, (1993). 'Human rights, rationality, and sentimentality', in: Rathore, A. S., & Cistelean, A. (Eds.). (2012). *Wronging Rights?: Philosophical Challenges for Human Rights* (Vol. 1). Routledge; Mutua, M. W. (2001). *Savages, victims, and saviors: the metaphor of human rights*. *Harvard International Law Journal*, 42(1), 201-245.

we guarantee rights and equality only to 'paradigm humans' – humans similar to ourselves⁶.

The challenge of effective equality in culturally diverse societies is therefore about challenging these historical structures of cultural domination and the expectations of cultural sameness. The focus on effective rather than formal equality signifies a change and requires us to think of equality in a different way. Effective equality is not about all of us being allowed to be the same and treated in the same way, but is instead about allowing each of us, individually or in communities, to be different. Difference is a challenging concept. Ever since Iris Marion Young wrote her *Justice and the Politics of Difference*⁷, difference has been a catchy term. Acknowledging difference is acknowledging that culture or religion cannot be approached in one dominant way. It is acknowledging that we all think of culture and religion differently and we also live them differently. What follows we must also be allowed to perform that difference in public – we are not all the same, we are all **equally** different. And being all **equally different** is the true challenge behind the concept of effective equality.

While difference has caught much attention of academics⁸, in public discourse difference remains exploited and used against those who exhibit difference. In what my colleagues and I have called 'post-multicultural era'⁹, particularly cultural difference is exploited and used against culturally different subjects. When we exploit rather than embrace difference we create the norm of the imagined homogenous 'we' and the deviation from that norm that effectively becomes 'the other' – the subject lesser than ourselves. We become caught in the 'us' versus 'them' narrative and begin to correct the 'others' for their difference. As a consequence we begin managing the now 'others', in contrast to including the different. What follows is correcting them into compliance with what we, ourselves, consider a right, or a 'neutral', equal norm.

Focusing on difference is challenging and dangerous, but a fight for effective equality embraces difference and includes it. In words of Etienne Balibar, when you are included: "you are granted a status (...) that gives you the possibility of being part of a community, particularly a political community or constituency, or you can be included when you find yourself in the position and the capacity to

⁶ R. Rorty, 'Human rights, rationality, and sentimentality', in: Rathore, A. S., & Cistelecan, A. (Eds.). (2012). *Wronging Rights?: Philosophical Challenges for Human Rights (Vol. 1)*. Routledge.

⁷ Young, I. M. (1990). *Justice and the Politics of Difference*. Princeton University Press.

⁸ E.g. Yuval-Davis, Nira. "Women, citizenship and difference." *Feminist review* (1997): 4-27; Balibar, E. (2005). Difference, otherness, exclusion. *Parallax*, 11(1), 19-34; Gozdecka, D. A. (2015). *Rights, Religious Pluralism and the Recognition of Difference: Off the Scales of Justice*. Routledge.

⁹ Gozdecka, D. A., Ercan, S. A., & Kmak, M. (2014). From multiculturalism to post-multiculturalism: Trends and paradoxes. *Journal of Sociology*, 50(1), 51-64.

act as a social individual and claim responsibility for initiatives in the 'civil domain'¹⁰.

But what then does it mean to include that difference in practice? How can we generate these true possibilities for those of us who are different? Would it mean differential treatment? And if so wouldn't that mean going against the principle of equality? One of the most commonly misunderstood things about equality is the distinction between equality and equity. While in conditions of formal equality, indeed we cannot differentiate treatment, in condition aiming to secure equity, we must. The immediate response is of course why? Why should we treat people differently to accommodate their difference and create effective equality, or as I called it equity?

This necessity has been convincingly shown by generations of second wave feminists, who insisted that conditions of formal equality for men and women are not enough. In MacKinnon's words: '(...) normative equality derives from and refers to empirical equivalence. Situated differences produce differentiated outcomes without necessarily involving discrimination'¹¹. What these critical feminists have been pointing out are the systemic barriers that cannot be tackled merely by equipping our legal systems with tools of formal equality. The same treatment often without formally breaching conditions of discrimination merely reinforces the barriers in access to rights in both public and private spheres. This happens because of our normative standards that have been created to accommodate those similar to 'us'. In contrast focusing on equity tackles the systemic barrier in order to enable different subjects equal access to those rights. In legal language this has been translated into tools such as for instance the affirmative action in the US, employment equity in Canada and in some other contexts into so-called positive discrimination. To illustrate let's think of gender parity quotas or language quotas reserved for traditional national minorities.

But today focusing solely on the traditional minorities may not be enough. We live in an era of unprecedented migration and diversification of national cultures. The composition of our societies changes fast, unlike our legal notions of equality. In practice we often measure the different against our norm, without seeing the systemic barriers of the norms we create. To illustrate it with an example, uniform food portions including pork in a school canteen where many students are Muslim does not enable effective equality and enjoyment of rights. Neither does a ban on veiling that has become so incredibly popular in Europe. While under conditions of formal equality they do not prima facie discriminate, protecting the cultural sameness and formal equality, when seen through the prism of equity, they clearly create barriers to the enjoyment of rights. Effective equality means creating equal possibilities for those different to be *an par* with us and participate equally in our societies not only despite their difference but with full respect to

¹⁰ Balibar, E. (2005). Difference, otherness, exclusion. *Parallax*, 11(1), 19-34, p. 32.

¹¹ MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press, p. 217.

their difference. With bans we divide and marginalise even further, rendering the different to remain perpetually 'other' – at the mercy of those seen as culturally supreme¹². The other does not enjoy rights in the same way we do, the other merely has her rights managed and administered for her by those considered a cultural norm.

If we want to create effective cultural equality we must rethink our ideas of what equality means in culturally diverse societies and we must acknowledge that rights, too must be enjoyed equitably and not only be declared as formally equal.

I realise that it is a demanding challenge, particularly now in the era of growing cultural suspicion that has marked a noticeable departure from multicultural policies in many European countries. Europe indeed faces unparalleled challenges, challenges we have not seen in the post WWII era. But remaining passive, only because solutions that could counterbalance growing racism and xenophobia appear too difficult, guarantees that divisions we experience will become even more insurmountable, the racism and xenophobia even more overwhelming and our dream of Europe united in differences and committed to the idea of rights will ultimately collapse. We cannot therefore underestimate the importance of the guidelines released here today. These guidelines attempt to take cultural difference seriously and I hope they will help in enabling equitable enjoyment of rights.

¹² Gozdecka, D. A. (2015). A community of paradigm subjects? Rights as corrective tools in culturally contested claims of recognition in Europe. *Social Identities*, 21(4), 328-344.

Mr Rodolphe Féral

Human Rights Division, Legal Affairs Directorate, French Ministry of Foreign Affairs and International Development

Living together in culturally diverse societies

I will attempt to explain as clearly as possible one of the key concepts that features in the guidelines adopted by the Committee of Ministers on 2 March 2016, namely the concept of “living together,” which is sometimes perceived to be a rather vague term.

The concept of “living together,” as it appears in the guidelines, received legal recognition by the European Court of Human Rights (hereafter “the Court”) in its Grand Chamber judgment of 1 July 2014, *S.A.S. v. France*.¹³

With this judgment, the Court gave legal significance to a concept which had previously been employed only in the field of politics and sociology. In fact, initially, the concept of “living together” appears to have come from the field of ethics, in the sense that Paul Ricœur ascribed to it in his work *Ethics and Morals*: relating to obligations characterised by both the requirements of universality and by the effects of constraint.

Since then, “living together” has moved from the sphere of ethics to the sphere of legal standards, and the guidelines could no longer ignore such an innovative legal concept at a time when the member states of the Council of Europe are increasingly facing multiple challenges relating to “Others”, particularly when it comes to the question of religion.

Of course, neither the legal recognition of the concept of “living together” nor its application are capable of generating miraculous solutions to all of these challenges. Nevertheless, this principle must be able to guide public authorities in their choices and decisions, and this is why the working group that contributed to the drafting of these guidelines, which I was lucky enough to be part of, felt it important to include the concept of “living together” amongst the relevant general principles.

The formulation which introduces the idea of “living together” in the guidelines is based on three aspects: rules which must be respected in order to create the conditions for living together; the essence of the principle, and finally its implementation. Allow me to say a few words about each of these aspects.

¹³ *SAS v. France*, 1 July 2014, No. 4385/11.

Rules for creating the conditions for living together

People are different; some believe in one god, others believe in many gods, others still are atheist or agnostic. However, they must all share the same world; they must all live together. How then can we reconcile the unity of the political and legal framework which embraces such diversity and that diversity itself?

In terms of successfully assuring the unity of “living together”, several solutions can be put forward. Of these, two points seem particularly worthy of attention for they are fundamental to the creation of the conditions for living together.

Firstly, in order to create conditions for living together, we must not allow any one kind of particularism, whether it represents the majority or the minority, to dictate its law to others. Unity becomes oppressive when subordinated to particularism.

This first rule for creating the conditions for living together has been present in the Court’s case law for quite some time.

Thus, as early as 1981, in its judgment *Young, James and Webster v. United Kingdom*¹⁴, the Court indicated that: *“Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.”*

Secondly, in order to create the conditions for living together, we should not use the pretext of supporting diversity to adopt laws which are specific to certain communities exclusively. To live together, we should not exalt differences to the extent that the coexistence of these differences becomes impossible. In other words, it is a question of drafting laws which fully respect pluralism and which go beyond particularism by being entirely independent of any form of it. The Court has stated that *“the role of the authorities [...] is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other”*.¹⁵

Consequently, in order to define the rules for “living together” for religious, atheist or agnostic persons, some individual preferences have to be taken out of the equation. The common universal denominator between atheism and religion is the freedom to hold and publicly express one’s beliefs; yet it is also the right to equal treatment by the state in its response to these beliefs.

¹⁴ *Young, James and Webster v. United Kingdom*, 13 August 1981, § 63, Series A, No. 44; see also *Chassagnou and Others v. France* [GC], No. 25088/94 and 28443/95, § 112, ECHR 1999-III.

¹⁵ *Serif v. Greece*, No. 38178/97, § 53, ECHR 1999-IX.

This is what the Court was suggesting when it held that *“Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups of individuals which are justified in order to maintain and promote the ideals and values of a democratic society.”*¹⁶

The link between these elements and the final wording in the guidelines is quite clear when the latter stipulate: *“although sometimes it is necessary for individual interests to be subordinated to those of a group, democracy does not simply mean that the views of a majority shall always prevail: a balance should be achieved which ensures the fair treatment of the majority and the minority.”*

What now about the essence of “living together?”

The essence of “living together”

Whilst it is true that the Court legally acknowledged the principle of “living together” in its aforementioned judgment *S.A.S. v. France*, it did not define the exact substance of this and referred only to the points raised by the French government in its observations to the Court. The Court even stated that the principle of “living together” allowed for a certain degree of “flexibility.”

Of course, if it is to be useful and efficient, this principle must not be excessively restricted nor see its essence blocked in too a rigid manner. It must be able to evolve and adapt, but there is also a fundamental core which cannot be derogated from, for this core constitutes the heart and the foundations of the principle.

It is for this reason that, in its observations, the French government in attempting to define “living together” did not draw up an exhaustive list, but stated that there is a basic core of reciprocal requirements and fundamental guarantees which are essential for living as a society. These requirements, such as respect for pluralism and tolerance, are fundamental insofar as they have an effect on other freedoms, and because they aim to avoid, where necessary, the consequences of certain actions driven by individual will.

These fundamental requirements of the social contract, implicit yet permanent, which include the prohibition of manifestly unequal treatment, are embodied in the judicial sphere in concepts such as *general interest* or *public interest*.

The basic core of reciprocal requirements for living as a society, which lies at the heart of the concept of “living together,” seems to me to have permeated the case law of the Court long before the *S.A.S. v. France* judgment.

Admittedly, the Court had never explicitly referred to the concept of “living together,” but had regularly stated and reasserted its belief in certain rules and

¹⁶ *Leyla Şahin v. Turkey*, 10 November 2005, No. 44774/98, § 108.

essential safeguards of living in a society, which themselves form the heart of “living together.”

For example, in the *Kokkinakis v. Greece* case¹⁷, the Court stated that freedom of thought and religion constituted one of the foundations of a democratic society. It suggested that this freedom was one of the most vital elements that make up the identity of believers and their conception of life, but that it was also a precious asset for atheists, agnostics, sceptics and the unconcerned. The Court added that “*the pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.*”

With this important statement, the Court recognised that rather than seeing the protection of religious freedom as something of benefit to certain individuals and communities at the expense of public interest, allowing the enjoyment of such freedoms actually contributes to securing public interests. At the same time, the Court emphasised that we must ensure that democratic societies remain open and inclusive by stressing the importance of pluralism, the fundamental core of “living together.”

Moreover, the Court has frequently stated that tolerance and respect for the equality of all human beings constitute the foundations of a democratic society.¹⁸

In legal terms, this basic core of reciprocal requirements for life in society could be defined as societal public order. But if so, then it is a positive kind of public order, one which consists of a number of societal values, and which differs from the traditional understanding of public order, often negative and preventative. It therefore falls to the public authorities to implement this “living together” by establishing limits, without which living in a society would be impossible.

The implementation of “living together”

It is indeed the task of public authorities to ensure the unity and essence of “living together.” The guidelines assert this very clearly by stating that “*member states should strive to ensure conditions that enable individuals and groups to live together in their diversity and allow the expression of pluralism, tolerance and broadmindedness that are hallmarks of a democratic society.*”

Over and above the member States, it is the role of public authorities – and I have purposefully been using this term throughout my speech because the guidelines are directed not only at states, but also at all public authorities, local and national – to guarantee the conditions which enable all citizens to live alongside all other members of society whilst respecting the values that characterise democratic societies.

¹⁷ *Kokkinakis v. Greece*, 25 May 1993, No. 14307/88.

¹⁸ See, for example, *Erbakan v. Turkey*, 6 July 2006, § 56.

This duty comprises several aspects. In the first instance, it involves negative obligations, the first of which is non-interference.

It might be appropriate here to refer to John Rawls and his theory of the veil of ignorance, as expounded in his work “A Theory of Justice,” which states that the rules of “living together” must be impartial. They must be driven by the interests of everyone – by the public interest.

Secondly, it involves what the Court has frequently asserted in its case law, namely that “*in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.*” (See, for example, *Hasan and Chaush v. Bulgaria*, § 78).

But the role of the State is not limited to staying neutral. Indeed, in the abovementioned *Leyla Şahin v. Turkey* case, the Court went even further, suggesting that the state has an obligation to ensure that religious life on its territory remains neutral and impartial. In this sense, the state must ensure that pluralism, tolerance and the protection of the rights and freedoms of others are reinforced.

By putting member states under such an obligation, is the Court not asking them to implement the fundamental core of reciprocal requirements that represent “living together?”

It can be said that, insofar as exercising one freedom can require the balancing of competing interests, it might be necessary to limit the enjoyment of such a freedom in order to protect the higher interests of society or public interest.

Let us remember in this connection that in its *S.A.S. v. France* judgment, the Court accepted that “living together” may be regarded as pursuing the legitimate aim of “*protecting the rights and freedoms of others*,” a factor which, in this case, allows a restriction to the freedom of religion, as stated in the guidelines.

However, even if the principle of “living together” were cited in order to justify restrictions to religious freedom, the Court would still undertake a careful examination of the necessity of such a restriction.

In conclusion, I would like to point out that ascribing legal significance to the term “living together” has opened up new spaces for promoting human rights and offers new opportunities for reinforcing mutual respect and understanding. What is more, this legal concept seems to have been taken up in other contexts. Indeed, in a reference for a preliminary ruling submitted by the Belgian Court of Cassation to the Court of Justice of the European Union, the Advocate General’s conclusions, presented on 31 May 2016, referred to “living together” in a legal sense. If the Court agrees with her Opinion, this concept will be legally recognised in Luxembourg as it is in Strasbourg.

Opening speech for session on “Building inclusive societies”

Diversity has been an integral part of European societies over centuries, and it remains an essential feature of contemporary societies. What is necessary is to manage this diversity and create the basis for democratic security.

This is why the Council of Europe has made a priority to act for Building Inclusive societies, and developed a transversal thematic action plan with this very title.

In the Action Plan on Building Inclusive Societies you will find activities that look at addressing integration, social inclusion and management of diversity. Activities looking at areas where it is essential that we show our capacity to resist to intolerance and to profit of such diversity: schools first and foremost, but also local authorities, media, police, civil society, business, culture, or even sports.

The Action Plan is proposed for 4 years, for actions which are expected to have an even longer impact in our countries. The Action Plan on Building Inclusive Societies has three main areas of focus: Promoting education for democratic citizenship, combating Intolerance and discrimination, supporting effective integration policies. Various CoE bodies are involved in it: the Directorate General of Democracy, the Directorate General of Human Rights and Rule of Law, the Parliamentary Assembly, and the Congress of Local and Regional Authorities.

1. Promoting education for democratic citizenship

Developing descriptors of competences for democratic culture, and teaching intercultural dialogue as from the early school years, feature at the heart of the “education” leg of the Action plan.

The Council of Europe has developed a new reference framework that can be used by formal education systems at all levels (preschool, primary, secondary and higher education) to equip pupils and students with the values, attitudes, skills, knowledge and critical understanding which they need to participate effectively and appropriately in democratic culture and respect the fundamental values of democracy, human rights and the rule of law. As a first step we established a model of 20 core competences, and of the descriptors underlying each of them, which need to be acquired by children and young people.

To give an example of a descriptor: the 6th competence given in the model is civic-mindedness. Civic-mindedness is an attitude towards a community or social

group to which one belongs that is larger than one's immediate circle of family and friends. It involves a sense of belonging to that community, an awareness of other people in the community and of the effects of one's actions on those people, solidarity with other members of the community, and a sense of civic duty towards the community. Descriptors for this competence might be:

- Expresses a willingness to participate in collective decision-making
- Participates in decision-making processes regarding the affairs, concerns and common good of the community
- Collaborates with other people for common interest causes

The framework will also contain documents to explain how the model of competences and descriptors can be used in developing curricula, designing programmes and teaching methods and appropriate forms of assessment.

In the final declaration of the 25th session of the Council of Europe Standing Conference of Ministers of Education in Brussels, 11-12 April, ministers endorsed this model and pledged support for practical piloting of descriptors. We are currently working on making the Framework available also in other languages than English and French to facilitate its diffusion, testing the descriptors in schools and training teachers.

The Action Plan also focuses on providing assistance to member States in helping migrants attaining the necessary level of language proficiency for true integration, on ensuring the effectiveness of the Lisbon Recognition Convention when it comes to the recognition of qualifications of refugees and migrants, and at overcoming possible obstacles for access to education for undocumented children and young people, through the elaboration of guidelines based on good practices in member states.

2. Combating Intolerance and discrimination.

Intolerance and stigmatisation of Roma and other ethnic groups, as well as of migrants remains an issue in many member states. ECRI country-specific monitoring and general policy recommendations are an important basis for combating these phenomena. As you know ECRI recently adopted two new GPRs, on combating hate speech and on irregularly present migrants. They deserve an adequate launch and dissemination in all our member States.

Our No Hate Speech Movement, a campaign which has been run by young people since 2012, to combat online hate speech, has been extended also off-line and will now run until 2017. The thematic focuses of the campaign are Anti-Semitism, sexist hate speech and the root causes leading to terrorism. It will be paying particular attention to the targeting of refugees and asylum-seekers. Young refugee life-stories, facts and figures and counter-narratives are being collected to tackle prevailing prejudices.

3. Supporting effective integration policies.

The third leg of the Action Plan looks at the necessary contributions that actors like local authorities and civil society, including youth and sports organisations, provide in order to support governments in their efforts. In this context I would like to mention, among others, the expected expansion of the Intercultural Cities network, which many of you already know as a success story and the launch on a larger scale of initiatives aiming at fighting stereotypes against persons of immigrant origin, promoting diversity in media and stimulating migrant entrepreneurship. The dissemination of the CM recommendation on Human Rights in Culturally Diverse societies, including this very Conference, also belongs to this part of the Action Plan.

We are also taking measures specifically to improve the integration of children and young people, in the framework of the new Strategy for the Rights of the Child, and supporting – through our European Youth Foundation, projects from local and national youth NGOs on the inclusion of young migrants and refugees.

Conclusion and introduction of the speakers

I am eager to listen to the next speakers and to their experiences, which I expect to provide extremely interesting examples of how our member States are – already – embracing diversity as an asset.

Ms Astrid Thors

OSCE High Commissioner on National Minorities

Integration of diverse societies

I appreciate the invitation to address this high-level seminar and welcome the initiative of the Council of Europe and Estonian Chairmanship to organize a discussion on this topic, which is timely amidst the ongoing discussions about diversity, migration and integration challenges – accompanied, unfortunately, by a disturbing rise in nationalistic and xenophobic rhetoric, and actions that seem out of place in today's Europe.

There is much experience and expertise in this room. It is a reminder of the well-developed architecture in the Council of Europe of human rights including minority rights standards, monitoring and enforcement mechanisms. The new *Guidelines of the Committee of Ministers on the protection and promotion of human rights in culturally diverse societies* is yet another important tool in this toolbox.

I also travel to countries that are not part of the Council of Europe – here I speak mainly about Central Asia – where instruments such as the Framework Convention for the Protection of National Minorities are unfortunately not applicable and tend not to be used as reference points by the authorities or persons belonging to national minorities. But even in the region covered by the Council of Europe, we know that having the mechanisms and standards in place is no guarantee that human rights in culturally diverse societies will be protected and promoted. Even in some countries where all the building blocks of democracy are supposedly in place, we see human rights coming under attack; human rights being presented as externally imposed or advocated by a select group; citizens not being fully aware of what human rights mean.

This concerns me not only because I am someone who cares about human rights. It concerns me as the head of an institution given a mandate to prevent conflicts over minority issues from occurring in the OSCE region.

Simply put, societies where human rights, including minority rights, are not protected and promoted are societies that are more vulnerable to tensions and conflict. They are societies where democratic institutions are not working and where public trust is eroded, where the rule of law is not functional. This does not make for long-term stability.

When societies are culturally diverse – as all societies in today's Europe are – this does not automatically make conflict potential higher. But we see too often that when good governance is not a priority, exclusion or marginalization of certain

groups worsens and frustration and resentment grow. Divisions between groups may be fostered and exploited for political gain.

The roots of conflict tend to be complex, and the solutions must be complex as well. Human rights, including minority rights, are at the foundation – a state cannot be said to be fulfilling its responsibilities if human rights are not respected. But we know that for sustainable, peaceful solutions, the state and other actors must build upon this foundation. They must work toward the integration of society – with a shared vision of a society where all members have equal opportunities to participate in various aspects of life.

The *Ljubljana Guidelines on Integration of Diverse Societies* issued by my institution in 2012 were an attempt to provide for OSCE participating States and other stakeholders a practical and balanced approach to putting that vision into practice. Most of the other thematic recommendations produced by my institution provide States with guidance on how to implement specific minority rights. The Ljubljana Guidelines build on those recommendations – they do not by any means replace them.

As the Guidelines state: “A stable society in which the dynamic processes of change take place without violence can only be achieved, maintained and further developed when the conditions to effectively exercise sovereignty are in place. In addition, sovereignty should be exercised according to the following principles: good and democratic governance, non-discrimination, effective equality, and respect for and promotion of human rights, including minority rights.”

As I often tell representatives of OSCE participating States when I meet with them: States must be the primary architects of integration policies. This is part of the fulfilment of their responsibilities as sovereign states. Integration is not an organic process that happens on its own: it must be facilitated and actively promoted with specific policies and measures. The Guidelines discuss what factors should guide states in designing and implementing those measures. Just as minority issues should not be treated in isolation, integration cuts across different policy areas, from media to security to socio-economic participation. Participation is a principle as well as a key policy area: and participation cannot be effective if human rights, including minority rights, are not protected and promoted for all, and if the very important principle of non-discrimination is not observed. Similarly, my office has worked with countries to ensure that national strategies and other documents aimed at promoting human rights take into account the diversity of society and the situation of minorities in that context.

But integration is not only about rights; it is also about responsibilities. This includes the responsibility of both majorities and minorities to participate in the wider society, for example by learning the State language, while the State has the responsibility to ensure that there are adequate opportunities to do so. In a number of countries I facilitate pilot projects to demonstrate how such

opportunities can be provided. After speaking with roomfuls of eager training participants I can easily counter those who might say: but minorities are not interested in learning the State language. But I also speak to concerned parents of schoolchildren who say, I want my child to learn the State language, but I want her to know the language of our community, her mother tongue. How can this be reconciled? Here my institution has experience promoting multilingual education as a tool for integration.

The practice of developing and adopting cross-cutting integration policies is, I am pleased to say, growing in the OSCE area. It is a practice I am helping to support in several OSCE participating States. The process can be difficult and may require compromise on sensitive issues. Most important is that consultations and discussions are as broad as possible, so the result has ownership and credibility. Of course no two integration policies should look alike, whether they are policies developed for different countries or by the same country in different time periods. Diversity itself is not static: we see a dynamic situation across the OSCE region today. We cannot put people in boxes, saying: you are this, you are that. One group cannot say, "We are the society, and you are the "other."

This does not mean that targeted solutions are not needed for particular groups. Special measures may be exactly what are needed to ensure effective equality. But integration policies must also be about the whole of society – majorities and minorities, with identities that can be multi-layered and multiple, as well as changing over time.

There are no shortcuts to integration. It is not a process that can be artificially rushed and it cannot happen overnight. It must also be included in the education process, where during our formative years we learn about each other, about the rights and responsibilities we all have and about the historical events that have shaped our shared and different pasts.

The more cohesive a society is already, the more resilient and better prepared it will be to take on new diversity challenges. We see in the OSCE region countries where divisions between "traditional" minorities and majorities persist alongside the arrival through migration of "new" minorities, in some cases putting additional stress on already fragile societies. Cutting corners by ignoring human rights or putting some rights above others for the sake of a short-term stability does society no favours in the long run. Rather, it undermines the very foundation of a stable society. The difficulties in coping with new arrivals should not be an excuse to put other aspects of interethnic relations at a low priority – quite the opposite.

The constant challenge is to adjust policies as needed, to keep channels of communication open and to include all stakeholders in decision-making. None of this will be easy, but it is the only way forward.

Mr Ted Cattle CBE

Director the iCoCo Foundation, United Kingdom

Community Cohesion in the UK

There has never been an integration policy as such in the UK – no stated objectives, no programme or targets and no monitoring of the level of integration.

The assumption was that integration would occur naturally over time. To some extent, this proved to be the case, with minorities sharing neighbourhoods with the majority in the UK's larger cities and urban areas. And as minorities were not compelled to lose their identities in order to be accepted as British, diversity became a reality and integration seemed to be improving.

However, the limits of integration were exposed in 2001 when my report in to the riots in Northern towns for the UK Home Secretary found that White and Asian communities were living in 'parallel lives' with little contact between them – and there was little by way of mutual understanding, trust, or tolerance in segregated areas. Tensions were never far beneath the surface.

From 2001 onwards, the new Community Cohesion programme offered a way forward. It took little from the previous 'multicultural' policies, other than suggesting that it was necessary to improve equal opportunities.

What was quite new to UK policy was that community cohesion sought to find ways that communities could get on well with each other, break down barriers and avoid tensions. This made it a much more proactive concept than 'integration' which had never had an agreed definition let alone programme. Community cohesion advocated that people should interact with each other, and build strong and positive relationships between people from different backgrounds – and that this should take place in the workplace, in schools and within neighbourhoods. It also meant promoting a sense of belonging for all communities, creating an appreciation of difference and investing in what we have in common.

New Approach

This new approach meant that, firstly, programmes had to be devised to promote interaction between all people from all communities to dispel prejudices and undermine stereotypes. Intercultural contact could no longer be left to chance. And institutional barriers to contact had to be removed.

What is also notable is that

- community cohesion programmes had to engage the majority White community who were struggling to come to terms with change - for the first time programmes were no longer simply focused on minorities.
- Though it began on the basis of improving relations between different ethnic and faith groups, community cohesion was soon used to change perceptions in all other areas of difference – for example, disabilities, gender, social class, sexual orientation – and sectarian conflict, for example between Protestants and Catholics in Northern Ireland.
- It was also locally focused, tackling the differences and tensions that were evident in each particular area and making the interventions relevant to them

A variety of agencies implemented the community cohesion programme. These included:

- Specially created voluntary sector bodies, funded by government or by philanthropists
- Local government and other statutory bodies, such as the police, health service and social housing agencies – but these were not special programmes, they were to be built into their everyday, or ‘mainstream’ services.
- Schools – they were a key focus, to help the students, their families and their communities, to become more comfortable with diversity
- The private sector – a number of employers established cross-cultural programmes and developed mixed teams for the first time (also helping the equality programme)
- Faith groups worked with their members and developed inter-faith initiatives

Interaction therefore depended upon facilitating contact but this in term also depended upon the removal of institutional barriers – particularly in schools and other public services.

But secondly, the programmes were much more than promoting interaction.

There was little point in creating positive interaction at the individual level, if this was then undone by negative views and comments in the wider community. It was therefore important to create a positive narrative of unity for all of the community. Campaigns like ‘One Leicester’ were championed in most cities. These were again aimed at minority and majority communities.

There was some resistance at first - people were understandably apprehensive about getting out of their comfort zones. This was soon overcome with the emphasis on enjoyable and challenging activities, for example by using the performing arts and sport and by bringing people together around a common cause and creating local pride.

Community and faith leaders also sometimes felt that their control was being undermined as attitudes and behaviours were now individualised rather than mediated through them. (And this did prove to be the case fewer communications and financial support was channelled through them).

Some academics also thought community cohesion was an attempt to deny difference and promote assimilation, and were initially protective of singular and 'essentialised' identities, seeing the creation of more complex multi-layered differences and commonalities as a threat.

But the results were very encouraging – annual surveys demonstrated that attitudes were becoming more positive about diversity, and research based evaluations showed that intercultural contact did in fact reduce prejudice and intolerance. In wider policy terms, an intercultural policy narrative began to emerge to support community cohesion and to challenge the previous multicultural approach.

However, the new 'extremism' agenda, developing from about 2007 and initially in parallel with community cohesion, gradually became a very dominant and singular policy objective. In 2010 the Government downgraded almost all community cohesion programmes, for example by taking the 'duty to promote community cohesion' in schools out of the inspection framework.

The focus has shifted to tackling extremist views. These are largely seen to revolve around the Muslim communities but some initiatives are focused on the Far Right. The UK's Anti-Extremism *Prevent* programme became almost entirely concentrated on attempting to stop young people being radicalised. However, there are now signs that various integration and cohesion measures are about to be re-launched and some policies have already been re-introduced under a different and more limited guise, eg through curriculum changes in schools. The Government has now felt it necessary to review its strategy and this is due in the Autumn.

The Position Today

The evidence suggests that two trends are evident today. First, there are some parts of the country where more mixed and diverse areas are being created, with little by way of community tensions. Younger people in these areas seem to regard diversity as a part of normal life, see it as positive and increasingly identify with a global community. There is now widespread acceptance of the view that 'you do not have to be White to be British' and mixed faith and mixed race is the fastest growing ethnic minority.

On the other hand, there are now still small pockets of segregation in many towns and cities with some neighbourhoods dominated by minorities. And the Far Right and religious and other extremists are still managing to stir up hatred towards 'others', particularly towards Muslims and Jews.

A Programme of Action

There is still much more to do:

Learning to Live Together

We need to reinvest in contact between all sections of the population, particularly across faiths and ethnicities - contact does reduce prejudice and stereotyping in respect of all areas of difference. In other words, we all need to learn to live together.

However, this is not just about contact. We also need to have real discussion and debate – and even ‘dangerous conversations’ in which we undermine simplistic and extremist views by developing intercultural understanding and building religious literacy – skills that younger people will need in an increasingly globalised world. Segregated communities do not have access to different world views.

We also need to change from the present emphasis on countering fear and threats. This unfortunately serves to reinforce negative perspectives of multiculturalism in general and Muslims in particular.

And with this in mind, we need to develop new ways of engaging Muslim communities and consider how they will feel included rather than ‘suspect’, and how to encourage them to engage others which is matched by a greater willingness by others to engage with them. This is perhaps one of the most urgent tasks which we face.

Providing for population growth – resources

Many people are struggling to come to terms with the pace of change in their communities and we therefore have to respond with much more investment in integration measures.

But there is a second and much more controversial point here too. Since 2001, UK population has grown by 5 million, around 8%. But have school places and resources, affordable housing, transport capacity and the health service also grown by the same amount? Migration is clearly tied to economic growth and tax revenues, but whilst the benefits seem to accrue nationally, they do not appear to have been invested in increased capacity at the local level and there is a very evident feeling of competition within communities. This has been dismissed too lightly and should now be addressed.

Tackling Segregation – Promoting Integration

Schools

Firstly, schools should provide young people with the skills and experience to to live successfully in an ever increasingly diverse and globalised world. Indeed, they will need such skills to compete in the future job market.

This can only be realised if schools develop a mixed intake in which students interact with each other and moreover, develop friendships across boundaries which bring family networks and communities together.

Children need to be taught about all faiths and none – they need to discuss difference and be able to accept diversity. This means developing a curriculum that gives them a world view with the critical thinking skills to question what they are being told by their faith and community leaders.

The workplace

The segregation of workplaces has been under the radar for far too long.

It is of course the case that some workforces are richly diverse, particularly our larger employers.

However, there are many businesses that are very monocultural and make little attempt to broaden their recruitment. This is especially true of employers that target new migrants and even more so where labour providers are used to recruit the workforce. For example, many parts of the food picking, packing and processing industry are deeply segregated, often built around separate language and ethnic groups.

A business-led task force needs to address this problem with some urgency and ensure more integration in the workforce and in the communities which they inhabit.

In addition, employers need to do far more to promote equal opportunities and positive action to ensure that their workforces represent the communities and customers they serve. This will also ensure that employees have the opportunity to relate to each other on a day to day basis.

Housing

People have to live in the same vicinity in order to encounter each other in shops, parks, sports centres and on the streets. However, this becomes even more beneficial when meetings become more meaningful as friendships form as a result of regular contact over time, especially where facilities are shared, schools are integrated, or people meet as neighbours. Too many areas are segregated, and have become more so in recent years.

It is recognised that housing is a difficult area in that people will resist any sense of compulsion. The focus therefore needs to be on incentives and particularly by ensuring that diverse areas are seen as attractive and creative places to live, with exciting and interesting social and cultural events. This can only succeed if supported by the 'narrative which champions a diverse and mixed society' referred to earlier – and the resources to make it a lived reality.

Communities

As suggested above, it is necessary to ensure that everyone has the opportunity to engage with others across divides and develop an intercultural competence. This clearly cannot be left to chance and has to be carefully planned and organised, at least until new networks are established. And the results are very clear – contact between different groups helps to promote tolerance and reduce prejudice.

Much of this work can be done by voluntary agencies in communities but they will need support. Statutory agencies, such as health and housing trusts can also facilitate such interaction, and they also need to avoid developing services along single ethnic and faith lines.

Concluding remarks

Finally, I wish to again emphasise the need to build a new language of integration that is positive – people must want to integrate and believe that diversity will provide opportunities to grow and develop. This must relate to ideas about identity and recognise that it is never fixed and that the absorbing of new and different layers of identity does not mean that people have to forsake their roots or give up their heritage, merely that they acquire new dimensions of it. What matters is that people have both the confidence and competence to discuss and explore their personal and collective boundaries without fear.

Ms Beata Engels Andersson

Head of Language Centre in Public Schools, Malmö, Sweden

Integration through mother tongue in schools in Sweden

I will talk to you about how we in Sweden teach bilingual students and newly arrived students, most of them refugees.

The Swedish population is 9.8 m. so Sweden is a rather small country compared to other countries receiving refugees in Europe right now.

During 2015 Sweden received 163.000 refugees. Many of these refugees came from countries as Syria, Afghanistan and Somalia, but even from other countries. 52.000 were children and of these 35.000 students were unaccompanied.

In my speech I will address the national regulations but even focus on how we implement this in the city of Malmö being the third largest city in Sweden with a population of 324.000 inhabitants.

During 2015 Malmö received 1252 students, 280 of these were unaccompanied.

Any child living in Sweden has the right to enrol in a public school free of charge.

In the Compulsory and Upper Secondary school in Sweden there are three specific ways for the multilingual students to improve their opportunities, to encourage their education and to choose a profession to create a prosperous future in Sweden.

You can even say that these ways are tools for integration in schools and society.

They are:

- Study counselling for newly arrived students
- Swedish as a second language
- Mother tongue education

The first tool

Study counselling is offered in the mother tongue of the student if it is required. The study counselling is implemented during the lessons by a teacher speaking the mother tongue of the student. In Malmö students can get this support for 4 years.

In advance of the study counselling it is compulsory for the schools to survey the students' knowledge.

The survey is carried out in the students' strongest language and the focus is on the students' resources and not what they may lack of knowledge.

The result of the survey is important for the planning of the lessons.

The second tool

Swedish as a second language shall be provided to the student with another mother tongue than Swedish if necessary.

The subject "Swedish as a second language" is provided instead of the subject "Swedish".

The subject has its own syllabus and grade. The aim is to give students the opportunity to develop their written and spoken language to be able to think, communicate and learn in Swedish.

These classes should provide the students a rich environment where they can communicate in Swedish according to their knowledge.

Students are given the opportunity to develop the knowledge of how to formulate their own opinions and thoughts in different kinds of texts and through different media.

Above all, they are taught how to communicate and use the language in everyday situations.

The third and last tool

Mother tongue education is offered to any student having another mother tongue than Swedish.

Even students speaking one of the languages of one of the five national minorities are offered lessons in their mother tongue.

The lessons follow the National curriculum and are taught close to the students' ordinary education.

Mother tongue education is voluntary for the students but approximately 50 % of the students in Malmö use this opportunity.

In 2015, 12 000 pupils are enrolled in the mother tongue education classes that are offered in 50 different languages.

The main goal is not only to learn the language, but above all, to create links between the mother tongue and the Swedish language, to talk about current events in both countries, Sweden and the home country, as well as to compare culture and history in both societies.

This goal facilitates and encourages the development of multilingual citizens.

The students also get a grade for the subject.

Fundamental values are addressed in the school curriculum. Swedish schools focus on democracy and gender equality regardless of ethnicity, religion, and sexual orientation.

This is integrated in any subject. Students do exercise by using different techniques in discussions.

The pedagogic focus is on creating active students that cooperate in different democratic ways.

Newly arrived students might have been used to very authoritarian school systems. Values in their country of origin may differ from values in Sweden. So this is especially addressed to this group of students.

Subject and language

Every topic has its own terminology.

In Sweden we try to make every single teacher and student aware of the special words in every subject.

It is evident that students gain a lot from this opportunity. Every single teacher is a language teacher whatever the topic.

Translanguaging

International research shows that one of the most important factors for success in studies for multilingual students is that they are allowed to use all their languages when they are in a learning process.

Lessons in school are offered in Swedish but it is accepted that students have discussions among each other in their mother tongue.

The goal is to rise the intellectual level. This is implemented in the schools in Sweden and is the national attitude combined with very high expectations of every single student, even the bilingual students.

Mr Jaume Asens i Llodrà

Deputy Mayor of Barcelona in charge of civil rights, diversity and transparency

Protection and promotion of human rights in intercultural cities

It is a great pleasure for me to be here with you in Strasbourg, home to the Council of Europe and the European Court of Human Rights. As you may know, I used to work in the field of human rights myself, as a lawyer. For me, the Council's instruments and the decisions handed down by the Court were, mostly, a guiding light in my work, the aim of which was to create wider opportunities for the effective exercise of rights, particularly in the field of public liberties and the fight against institutional violence.

Now that I am deputy mayor of Barcelona and responsible for implementing public policy in the fields of civic rights, interculturalism, diversity, transparency and participation, the European, and pro-Europe, perspective is more important to me than ever. Whereas before I used to prosecute human rights violations and defend victims, now I am in charge of policies that must be directed at upholding, protecting and safeguarding these same rights. It is a responsibility that I have accepted with humility and enthusiasm and, despite my considerable experience, a little trepidation. Over the next few minutes, I will try to give you an overview of how we work.

It is clear from what the previous speakers have said that diversity is a fact of life. As regards my own city, allow me to give you a few figures. Barcelona has 1.6 million inhabitants, of whom roughly 16% are foreigners (approximately 260,000 inhabitants). In 2000, the figure was less than 50,000. Between 2000 and 2008, the city saw a large influx of immigrants. Since 2008, the numbers have levelled off.

The top ten countries of origin are, in descending order: Italy, Pakistan, China, Morocco, France, Bolivia, Ecuador, Peru, Colombia and the Philippines. In other words, two neighbouring EU countries, the country immediately to the south of us, various Latin American countries and two Asiatic giants. This varied list and the figure of 16% foreign inhabitants do not reflect the city's true diversity, however.

As well as considering the city's foreign-born nationals who, now that migration has dipped, are becoming increasingly numerous, we have to take a wider view of diversity, so as to include other factors, such as religion and language.

Barcelona is home to more than 20 different religions and beliefs, and over 500 places of worship. The most widely practised religion is Catholicism with the evangelical churches in second place.

As regards languages, a recent report by the UNESCO body Linguapax found that more than 200 different languages are spoken in the city. To give you some idea, Barcelona has a daily newspaper published in Urdu, a Chinese weekly newspaper and over 15 radio stations broadcasting in languages other than Catalan and Spanish.

Another element to the city's complex mix and one that is often erased is the Gypsy community. In Barcelona, as in the rest of Catalonia and Spain, persons of Gypsy ethnicity are not categorised as such in the census so we have no official data on the size of the population. Gypsies are, however, present in significant numbers in 6 of the 10 districts, and there are thought to be around 20,000 of them in total. The Gypsies have their own culture and their own language, which we wish to support, as well as a religion and a community-based way of life that are likewise quite distinctive.

What role can and should the authorities play, in the face of this genuine and palpable diversity? I will skip over, if I may, migrant reception and social assistance policies, as these are more in the nature of contingency planning and the focus of this seminar is on long-term policies, to promote integration and social cohesion, using an approach based on human rights and interculturalism.

At the mayor's office in Barcelona, we believe that our main job is to uphold, protect and safeguard the rights of our citizens. If we recognise certain rights in international treaties, constitutional texts and also local instruments (such as the European Charter for the Safeguarding of Human Rights in the City), that puts us in the role of custodians of those rights. And that obligation has to be more than just empty words, because it binds us and places us under an obligation to other states, other cities and, first and foremost, towards our own citizens.

You are no doubt already familiar with the three-fold obligation, but it never hurts to remind ourselves of it. Being a custodian of rights means that as a local authority, we have an obligation to uphold them (and so refrain from violating them ourselves), protect them (and so create the conditions needed in order to exercise them) and safeguard them (and so prosecute, punish and provide redress if they are infringed). The responsibilities are many and various, therefore. And that is even more true in a city as diverse as ours.

In Barcelona, therefore, we intend to incorporate this human rights approach into the process of framing, planning and evaluating public policy. This approach allows us to put people and their rights at the centre of policies. The challenge will be to succeed in implementing meaningful policies in line with these major principles and declarations, and to translate them into effective, measurable actions and initiatives. While these broad principles are unlikely to meet with

much political opposition, often it is when making decisions about the specific types of policies required that splits occur and subtle ideological differences emerge.

Allow me to give you some recent examples of our policies, ones that clearly illustrate the kind of efforts we are making in this area: in order to uphold citizens' right to information, we have decided to make the municipal information helpline and 010 numbers free of charge; in order to uphold the right to health and education, we have improved the procedure for inclusion in the register of local residents, the gateway to these rights, to ensure that everyone, whatever their administrative status or living arrangements, can get on the list; to safeguard the principle of open government, we have set up an independent board to review municipal policy in this area. We also plan to beef up the Office for Non-Discrimination, a ground-breaking initiative when it was first set up in 1998, to advocate and respond in cases related to hate speech, full citizenship or the exercise of civil rights in the use of public space, three of the policy areas prioritised by the current Administration.

These policies will be incorporated in a "Barcelona City of Rights" plan which will be introduced in the coming weeks and will see action on two fronts: implementing prevention and human rights protection policies in the key areas I have just mentioned and developing methods and practical indicators relating to rights in other areas. Around 800,000 euros will be earmarked for the Plan this year.

It is worth noting in this context that many of the rights recognised in our city are not within the purview of local government. This obviously limits our room for manoeuvre, but by no means eliminates it altogether, as the following two examples of local government policy in action show: the recent institutional declaration, demanding that foreign residents be given the right to vote and stand for election, and the "Barcelona, Refuge City" programme.

I would also like to talk about the second cornerstone of our diversity management policies, namely the intercultural approach. Since 2010, Barcelona has had an Intercultural Plan to turn Barcelona from a city that is merely diverse into one that is also intercultural, something we are confident will come about in the not too distant future.

The intercultural approach, as we understand it, has five different dimensions, all of which help shape a certain outlook on society: positive interaction, which means encouraging contact between groups and people whose paths do not usually cross, based around common interests and issues; equal opportunities and rights and non-discrimination, as an objective to be attained; diverse participation, which is about including all citizens in formal and non-formal participation processes; acknowledgement of diversity, how we relate to others, the respect that comes with knowledge and understanding, and the fact of making visible all the groups and individuals who make up our society; and, lastly,

sense of belonging as an indicator of bonding, rootedness and attachment to one's neighbourhood, city and immediate environment.

Here again, the challenge is to move from rhetoric to action and specific measures. To show how this can be achieved, I will give you a few examples of what has already been done and what we plan to do.

Barcelona's Intercultural Plan is without doubt one of the benchmark municipal schemes operating in Europe today. It comprises 10 lynchpins, 30 goals and over 90 measures, and has a total budget of almost one million euros. I will tell you about just a few of the measures, the ones which have been shown to have the most impact and staying power.

The first such measure is the anti-rumours strategy, which takes the form of a catalogue of more than 30 activities carried out at the request of organisations, individuals, companies or various departments of the mayor's office. Since 2010, the city has played host to an average of 3 activities per week: theatrical performances, debates, workshops, etc. The formats vary and are tailored to different target groups. The strategy also includes creating a network made up of organisations and individuals, whose tasks include monitoring the strategy itself, to help the mayor's office report on public policies. The network also organises its own activities, such as the meeting with media outlets which this year will take place in October, and will look at the treatment and portrayal of diversity in the media. The strategy also includes training initiatives. So far, more than 2,000 people have been trained as "anti-rumour agents", i.e. have been given training in techniques and tools for dealing with the kind of everyday rumours and stereotypes that create a breeding ground for discrimination and hate.

Other notable activities that have been introduced under the Intercultural Plan in recent years include moves by the mayor's office to embrace intercultural communication. We have made diversity an integral part of our information campaigns, for example, by featuring people of different origins and using a range of languages when communicating with local residents.

As well as continuing and stepping up this action, we also intend, during our time in office, to pursue a number of new goals: to increase the visibility of the Gypsy community and to empower them, to promote equality of rights in a context of greater religious plurality, to empower, and improve the education of, youngsters from different backgrounds, to increase diverse participation, to combat hate speech and to promote full citizenship.

Allow me to give you just two examples of projects that we are launching in pursuit of these goals. In an effort to empower young people from different backgrounds, we have embarked on a project with 20 youngsters called "Soy joven, soy referente" ("I am young, I am a mentor"), which is basically a scheme to provide youngsters with academic and vocational training so that they can join the teams of trainers working on the Intercultural Plan. It is also planned to

introduce a scheme whereby university students act as mentors for primary and secondary school pupils, to try to increase the percentage of pupils from different backgrounds who go on to higher education.

To combat hate speech, we plan to hold an international seminar in November this year on hate speech on social media, during which we hope to examine various strategies for combating the problem. We are also working hard to develop a plan to combat Islamophobia, and to produce a translation of the Council of Europe's "Mirrors", a manual on combating antigypsyism, which we hope to present in Barcelona by the end of the year.

I would like to end by saying that this seminar has enabled us to continue learning about other perspectives and approaches. And helped us realise that the road ahead is long and paved with challenges. It is our belief, however, that, for all its limitations and contradictions, the intercultural and human rights approach which we have chosen is the right one for creating an intercultural city where all human rights can be exercised in an effective and meaningful way. Thank you for supporting us on this journey.

Mr Harald Bergmann

*Thematic Spokesperson on human rights at local and regional levels,
Congress of Local and Regional Authorities*

In 2015 the Congress of Local and Regional Authorities of the Council of Europe adopted a resolution and a recommendation on focusing on the role of local and regional authorities in combating and preventing radicalisation.

The Congress drawn up guidelines on preventing radicalisation and manifestations of hate at grassroots level, and created a pedagogical toolkit for use by local elected representatives when organising intercultural and inter-faith activities. It is also committed to developing training modules on human rights issues and holding a Human Rights Forum at local level on a regular basis, which the first took place in Graz in May 2015 and next year the 2nd in my hometown Middelburg, the Netherlands.

The measures proposed also include compiling and updating the Council of Europe's legal instruments which promote citizen participation and living together, notably the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

The adopted texts stress the importance of involving citizens, particularly young people, for example through awareness-raising campaigns, including in schools, participation in neighbourhood councils or foreign residents' councils and the promotion of intercultural and inter-faith dialogue.

The terrorist attacks in Brussels, Paris, Copenhagen and Tunis have shown that this threat is more present than ever and calls for concerted action at all levels of government. Combating terrorism is not only a national task but also entails action at local and regional level.

The fight against radicalisation calls for preventive measures, because in the long run it is more sensible and more cost effective than symptom-prevention or crisis response. Promotion of intercultural and inter-religious dialogue is one of those measures.

Chosen local representatives are closest to the citizen and are the most appropriate persons to that dialogue by means of information, prevention and education. The attention that local authorities have for bringing together people of different faiths, both religious and non-religious, would be reflected in concrete policy on social work, education, sports, urban planning and culture, and in their relationship with local groups.

That is why the Congress wants to have organised intercultural and interfaith activities, and accordingly developed a toolkit. This toolkit consists of a series of digital info sheets, the 12 principles for inter-religious dialogue at local level and also the directives adopted by the Congress.

About the 12 guidelines for interfaith dialogue at local level.

The first three are about: **the local religious situation and understanding (1-2-3)**

1) local authorities must take note of the increasing importance of religion in the formation of the individual and collective identity as well as by the influence of religion on the socialisation process and the formation of social representations and on the look of the citizens on the world. Religion gives direction to the way people think and offers a system of values and rules of conduct.

2) The authorities must have good knowledge of the relative size of local religious groups and how they are organised. It should be clear that they are aware that local religious organisations, with their education and training activities and with the services they offer, in the advantage of the citizens in General. These organisations offer their members a sense of significance and contribute to social relationships. In that sense they are full participants to the local society. Important it is to pay particular attention to the role of families, and especially to those of mothers. They contribute to the transfer of their cultural values to the next generation and to an open attitude towards the society.

3) Religious organisations should not be considered as homogeneous entities, but as organisations that sometimes even are subject to conflicting insights. That why it is important for the local government which interlocutors they choose. Choose partners who are open to dialogue and at the same time, in a position in which they can influence their own community.

The 4th and 5th are about: **The understanding between participants in the dialogue (4-5)**

4) Local authorities should contribute to the discovery of other cultures, by studying cultural similarities and differences and, by getting involved into cultures with a different view of the world, in any case other than locally common, and to spread and share information with the community.

The aim is the development of cultural knowledge. Education, in schools and in religious study centres, play a crucial role in promoting an open attitude and a quest for knowledge. An open attitude towards others is also conducive to a greater need for a better understanding of your own religion or for your own personal and social values. With a greater cultural awareness can contribute to

deminish the risk of radicalisation.

5) Local authorities should seize opportunities to stimulate citizens to share knowledge and to promote personal contacts and take away distrust towards others and even their feelings of anxiety. All with the goal of a steady development of lack of ignorance to knowledge, from knowledge to understanding, and from understanding to trust.

(For instance, different places of worship can be visited or annual intercultural or interreligious forums or festivals can be organized. At the same time, a Council for intercultural and interreligious relationships can be set for the multilateral exchange of insights.)

The 6th to 11th are about: **setting up Partnerships (6-7-8-9-10-11)**

6) Local authorities are very meaningful to the public. Their active role in the lives of citizens, their familiarity with all those involved and their ability to innovate gives them an edge and a legitimate role in their relationship to religious activities.

(Their discussions and activities must be motivated by a commitment to openness, innovation and experiment.)

7) To be more effective and more valuable on the long run, local authorities must promote dialogue and search for cooperation, in their approach the must use to the following conditions:

- respecting legality; promoting equality between men and women; religious neutrality and non-discrimination; complete transparency.

8) Local Governments should not directly get involved in interfaith dialogue. The principles of subsidiarity and religious autonomy would have to stop them of financial support and organisation of inter religious dialogue. The official attitude there would be a of non-indifference and non-interference. The local governments would essentially have to facilitate, mediate and, only if necessary, arrange, negotiated on the basis of clearly defined goals.

9) local governments can ensure that religions are not seen as a problem but as a source. To do this, they should place the emphasis on recognition and confidence and a sense of democratic management of pluralism. Their activities would have two objectives: to set up a more coherent organisational structure for local religious beliefs and strengthening social cohesion. (*The bodies involved in the dialogue and partners would nothing have to do what fits within their specific role and the dialogue would first of all have to see as a common good that must be encouraged.*)

10) places of worship, for example, would need to be constructed and managed in such a way that they balance, harmony and promote openness. *(This means a gradual shift of a multi-religious approach to an interfaith approach)*. The activities of local authorities should be motivated by the promotion of a common belief in a God with more faces.

10) the attention of local authorities for religious diversity and interfaith dialogue should be reflected in concrete policy on social work, sport, education, urban planning and culture, and in their relationship with local groups. That way creates a transversal dimension. They need to influence and engage in all activities. If all concerned are willing to listen to each other, this means that all denominations get the opportunity to express their religious beliefs in so far as this does not conflict with other fundamental rights.

The last, the 12th is the Evaluation (12)

12) Local authorities should in consultation with local religious organisations define which criteria and indicators they should use to measure the effectiveness of their intercultural and interfaith dialogue. It would include, for example, to the development of their own expertise or to set up networks for the exchange of information between believe and of training and information centres. They also could connect with representatives of other local governments in order to compare the different approaches and so to tighten their own approach.

To conclude: these 12 principles will promote inter-religious and intercultural dialogue and are for the Congress of local and regional authorities a crucial part of the dialogue between the various groups that make up our local communities exist.

It is an effective tool in the fight against intolerance and radicalisation and strengthens the purpose of "living together" with mutual respect.

Mr Michaël Privot

Director of the European Network against Racism (ENAR)

“Forgotten women” project

I represent ENA (European Network against Racism) which is voicing the concerns of ethnic minorities about racial equality issues at the European level since 1998. So, to echo some of the concerns that we heard this morning, the field of action in this area is very immense and the challenges ahead of us are really defining.

Thus, as ENA we try with the limitless resources to focus on projects and actions that can help us to get some leverage efforts and to have an impact on as many people as possible with a limited scope of action and of course from an anti-racist perspective. The project focused on women, as a few years back we realised that Muslim women were particularly forgotten, hence the name of the project in the struggle of equality by the different groups working on human rights being the generalist organisation, or feminist or anti-racist organisation.

We have had the impression, of course, when we look at the particular debate that Muslim women are all over the place, but it is actually not the case. The debates are about the place of religion in the public sphere or if the headscarf should be banned in the public space. There is no little concern for the women identified as Muslim, as human beings holders of right to equality and non-discrimination.

So to discuss this sensitive area from the outset, we established a very strong link with a sister organisation, the European women Lobby, to ensure a gender perspective escape throughout the project. We decided to engage in action research and focusing really on the intersectional dimension of islamophobia against Muslim women in the field of employment and hate crime, because these are two areas where there is EU legislation and therefore it can have an interesting average when looking at the conclusions.

Therefore, what we did is to run field research and desk research in eight European countries: Sweden, Denmark, Germany, Netherlands, UK, Belgium, France and Italy over more than one year on this issue and in the objective of producing data because there is not enough so far in this area.

So to come to the results, the main conclusion is that first in foremost, islamophobia is an extremely gender biased form of racism as women are

disproportionately targeted by discrimination racist violence and speech. Depending on the country and the sector you are looking at it is between 60 to 80 % of all cases are concerning women. Therefore, the conclusion of the report is that Muslim women are targeted first because they are women even being identified as Muslim or identified as another alternative ethnic background.

Indeed, we can really see the compoundedness of penalties that they are facing in their life. I would like to quote as an example, very few figures that we can have, unfortunately they were two independent surveys that were done in France and Germany with similar methodologies i.e. sending cv's, data exactly similar. So, when a CV with a white sounded name for women the answer rate is about 90% and then if I put a Muslim sounded name it goes down to 75% of answer rates but if there's a Muslim sounded name and a picture with a headscarf it goes down to 3 or 2 % so obviously you can see that there is really a compoundedness that is targeting those women.

Furthermore, we do regret of course that our report just came out 2 weeks ago, so way too late before the Avocat general Kokott could have read it before insuring her problematic opinion for the court. This is a really a step back in terms of equality and non-discrimination as it introduces de facto a hierarchy between grounds. As we see some need some grounds to be protected as recognised the Avocat General and others not because allegedly we could leave them in the cloak room which is kind of extreme and introduce problematic notions such as national identity to be taken into considerations by judges when they are giving decisions on issues where a region is concerned. Of course, we can imagine when we talk about Islam or citizen and connecting this to national identity might give interesting results and finally she denies the fact the banning headscarf is a direct discrimination on the ground of sex and gender which come totally against the result of our empirical research and also progressive legal analysis.

Also, what came out very strongly with the research is that civil societies organisation but also increasingly a number of member states are concerned by the political and ideological dimensions of courts decisions where the perception of region is playing a role and this concerns the European Courts of Human Rights and we heard this morning from judge Karakas in the case of Ahmet Arslan, concerning a man who was wearing a garment that was supposedly forbidden but Turkish state, they went to Court Turkey was condemned but you see that in all the cases which concerns Muslim women they lost.

So basically, we can't help having a gender approach to the conclusion of the Court, when it is a Muslim woman you lose but when it is a Muslim man you win.

Therefore, you really have to see that this is undermining the trust of Human Rights in society organisation and the progressiveness of the Supreme national jurisdiction when cases of course increasingly complex and political due to the deepening and broadening of Human Rights when it comes to specifically issues that are connected to region.

After the research, we went into action, that was the most interesting part, I would say, we generated or gathered roundtables in the national countries to discuss the research and it was also the first time that a member of an anti-racist organisation, Muslim organisation, feminist organisation come together to start a conversation. Thus, it was really important to get to that point. The report was published weeks ago and we are going into phase two of this project. Now we are going to deliver 8 grants to foster concrete action between Muslim women, anti-racist organisation and feminist organisation to follow up on the roundtables.

The idea is to build concretely fronts between organisations and movements while ensuring that we close the gap between our respective concerns and ensure no group is falling in between our work in a way sectorial and sometimes we do not cover groups that are facing compounded or intersectional forms of discriminations.

So, the long-time result that we wish to achieve is reinforcing the connection and actions between anti-racist Muslims and feminist organisations to actively struggle against the class-sex nexus of exploitation but also as an intermediary step so what we want to do, in the mid-term, is that we really have on board the protection of Muslim women as women no matter what their personal belief and to really take away from the far-right or neo-populist right or even the secular left parties the argument of gender equality to keep excluding from the labour market and also from the protection against violence women on the ground of their gender, ethnicity and religion as a compound form of racism.

Mr Hussam Mohy Eddin

Migration issues Adviser, Civic Assistance Committee

School for Syrian refugee children in the Russian Federation

EDUCATION FOR CHILDREN

One of the most important aspect of integration for refugees and forced migrants is the education for children.

The right of children to education is guaranteed by the Constitution of the Russian Federation and the Federal Law.

However, in 1996, in Moscow, by order of the Mayor of the city, Yury Luzhkov, school enrollment was made dependent of the existence and type of registration.

Many children refugees from Armenia, Chechnya and other countries were deprived of access to school because of that order

That same year, in 1996, the Civic Assistance Committee opened a Center for adaption and education of refugee children in Moscow.

CENTER FOR ADAPTION AND EDUCATION FOR CHILDREN REFUGEES IN MOSCOW

After some time the center accepted all children refugees and became a heaven for them; there is no discrimination in classes or groups.

Children studied, played and went to the museum and theatre.

All teachers were volunteer students from famous universities. The children studied mathematics, Russian language and foreign languages.

The Civic Assistance Committee fought for four years with that order through courts, and in 2000, the order was cancelled.

In 2004 the Civic Assistance Committee was awarded the "Nansen Refugee Award" .

Part of this award was spent on the culture life in the center. All children went to a summer camp close to Crimea and visited Saint Petersburg.



**NANSEN
REFUGEE
AWARD**

This center is working till now and continues helping the children of refugees.

RESTRICTION IN ACCESS TO EDUCATION IN RUSSIA FROM 2007

In 2007, the Ministry of Science and Education made the access to school again dependent on the existence of the residence registration.

The Civic Assistance Committee met the deputy Minister and discussed that order with him. The result of that meeting was an explanation note which specifies that priority in access to school is given to children with residence registration, and then, other children can have access to the school.

In 2014, school enrolment was again made dependent on the existence of residence registration. We went to the highest court to cancel this order, but the judge did not cancel or change it. He just added in his decision that all children have to go to school. This order issued by the Ministry of Education and Science gives the school director the right to require that parents provide documents about the legal status and registration in order to enrol children in school.

Restrictions in access to education in Russia

1. The parents should have a legal status in Russia.
2. The children and their parents should have a residence registration.
3. The children have to speak the Russian language and understand it.

PROTECT THE RIGHTS OF CHILDREN OF REFUGEES

Since 2014, the Committee conducts systematic work to protect the right of refugee children and other migrants to education. This work includes:

1. Conducting monitoring of the violations of the right to access education:
in 2015, 54 violations of the right of children to education were recorded.
2. Assistance in obtaining access to education for children. In 2015, with the help of the Committee, 38 children gained access to education.
3. Cooperation with the authorities in order to change the overall situation (letter to the Ministry of Education, the Government of Moscow, the prosecutor's office and appeal to the Supreme Court of the Russian Federation, and others).

THE IMMIGRATION CRISIS

The military actions in Syria and Yemen, the ongoing confrontation between armed groups in Afghanistan and Africa and many conflicts all over the world have generated unprecedented flows of refugees.

The current migration crisis, the biggest in the world since the Second World War, poses a serious challenge for the world community.

SYRIAN REFUGEES IN NOGINSK

Many Syrian families with children live in Noginsk and neighbouring Losino-Petrovskiy.

Around 2000 Syrian refugees live in Noginsk and Losio-Petrovsk. Most of these people have started working in the garment factories that were opened by their compatriots a few years ago.

Most of them have no legal status and only some of them have received temporary asylum in Russia, and are now trying to register their place of residence in order to gain access to health care and send their children to school.

In 2015, there were 59 kids, between the ages of 7 and 13. None of them have access to the school.

THE FIRST ATTEMPT TO OPEN A SCHOOL 2015

The Syrian journalist refugee Muiz Abu Aljadail organized an informal study group, initially in Arabic, after which the Civic Assistance Committee got involved and recruited professional teachers.

Classes began in May of that year under the auspices of the Civic Assistance Committee's Adaptation and Education Center for Refugee Children, with the assistance of the United Nations High Commissioner for Refugees.

Around thirty Syrian children who had settled in Noginsk that year were pupils at the school. On August 24, 2015, the school was closed by the local Russian Federal Migration Service (FMS) officers.

ONLY ONE SYRIAN CHILD ENROLLED IN NOGINSK SCHOOLS DURING TWO YEARS

The Civic Assistance Committee organised small group of specialists to go with each child to the school to enroll him or her in regular schools.

Several times, this group went to many schools in Noginsk with no results. Most of the children do not have a legal status, resident registration or they do not speak the Russian language. Only in the School No. 17, was the director ready to accept a pupil without resident registration.

The first child, who officially enrolled in school, was 9 years old Fatema Dzhasir. The girl speaks Russian fluently, she has learnt the language, watching Russian TV.

The school director received a reprimand from the Department of Education for his actions.

SCHOOL IN NOGINSK FOR SYRIAN CHILDREN REFUGEES

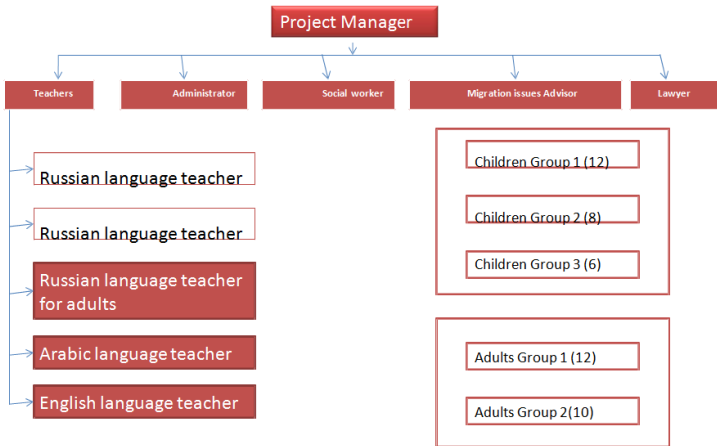
The Civic Assistance Committee decided to launch special Russian language and integration courses for Syrian refugees and has obtained, for this project, a financial support from the UNHCR for six months.

The purpose of the project is to help people, who fled war in their country, to integrate into Russian society.

This project is focused primarily on children because they are not accepted to schools, and the primary goal is to prepare the children to enroll in regular schools in Noginsk in September

Courses are not only for children but for adults as well, because there are a lot of Syrian refugees living there and they lacking Russian language for communication in everyday situations.

THE SCHOOL CHART



Syrian children are taught from morning till afternoon, adults come to these classes after they get off from work

Main activities of the school

Learning activities

Reading, writing and understanding

Entertaining activities

Go to camp in summer, go fishing

Cultural activities

Watch video, visit museums, visit theaters

It is difficult to apply for asylum in Russia, so many refugees do not have legal status and therefore have no access to health care and are not allowed to work, and their children cannot enroll in school.

The Civic Assistance Committee helps refugees and forced migrants to integrate into the Russian society by dealing with the many challenges these people are confronted with.

The Civic Assistance Committee helps refugees and forced migrants with health care and try to give them financial assistance, food and clothes.

Ms Brigitte Konz

Chair of the Steering Committee for Human Rights (CDDH)

Final observations

Ladies and Gentlemen,

Now that we have reached the end of this seminar, I do not intend to summarise the debates but rather to make a number of **final observations**.

The Guidelines are the outcome of intense intergovernmental work, which culminated in the negotiations within the Committee of Ministers. I pay tribute to the exemplary manner in which the Chair of the Rapporteur Group on Human Rights, Ambassador Bellatti-Ceccoli, conducted the debates through to the adoption of the text in March 2016.

I would like to thank the Estonian chairmanship of the Committee of Ministers, which without hesitation agreed to join us in organising this event, thereby giving the Guidelines the requisite visibility. As Chair of the Steering Committee for Human Rights, I believe I can say, on behalf of our committee, that, by holding this Seminar, we have fulfilled the mandate with which the Committee of Ministers entrusted us in the context of the current biennium.

As the Deputy Secretary General of the Council of Europe pointed out, a major effort is still required to disseminate and translate the Guidelines. Making the relevant texts available on the Internet and publishing the proceedings of our seminar will undoubtedly help to make our member States aware of their task in disseminating the guidelines with the help of civil society to ensure that they do not remain a dead letter.

Indeed, there is an urgent need to make these guidelines known in our different countries.

We have all witnessed the **practical difficulties of living together** in our societies. How should we react to certain situations? What role should the State play in specific cases: should it intervene or abstain from doing so? How should we react when faced with “competing rights”?, a situation which could be exploited by nationalist and extremist groups...

We all know that it is the State’s duty to strike a fair balance between the different rights and interests at stake, in particular by ensuring that any restrictions are provided for by law and are necessary in a democratic society and proportionate to the legitimate aim pursued.

And when we talk about the State's responsibility in ensuring peaceful co-existence, we are, of course, talking about a wide range of actors: not only judicial bodies, parliaments and national governments but also, and sometimes especially, regional and local authorities. The presentation of good practices has shown us a variety of impressive examples of effective implementation at different levels.

The public authorities obviously cannot and should not do everything: the media, opinion formers, religious communities, and civil society also have an important role to play in finding solutions and putting them into practice. The guidelines quite rightly underline this.

The Seminar, quite rightly, underlined the fact that in Europe, although we may have diverse legal and cultural traditions with specific features, we also have the common basis in the form of the Convention, which is our point of convergence and our collective guarantee. We are all aware that we are guided by the case-law of the European Court of Human Rights, but it is a guide which takes account of the principle of subsidiarity.

The addresses by our guest speakers, to whom I extend our gratitude, provided the opportunity to underline our basic standards and to discuss together issues such as:

- the need to **reconsider what equality means**
- the need to respond appropriately to **multiple discriminations in various fields**
- the need to **respect diversity without creating divisions in society**, and avoiding the establishment of ghettos
- the need to **"live together" while respecting a common set of rules**, which constitute a sort of "societal public order".

The Seminar has provided the opportunity to discuss sensitive issues, for example certain groups of persons quite rightly ask the State or society for additional attention and a particular awareness of their problems. How can this be achieved? We cannot ignore the fact that this may be perceived as an "undue privilege" by populist movements, which use this reproach to fuel new hotbeds of tension.

It is not only a question of "living together" but of "learning to live together". We must also have real debates and even risky discussions to counter the points of view of extremists and populists. And we must foster intercultural understanding, particularly among young people. They have a great need of such understanding in today's world.

The Seminar illustrated the importance of:

* ensuring that everyone, including young migrants and refugees, have access to education so that they can learn about our common values;

* facilitating the social inclusion of young people living on the margins of society so that they can, without losing their roots, adhere to, or at least respect, the values of such a society. Their effective participation in the life of the community can help to avoid their marginalisation, which often leads to radicalisation. The seminar has given us examples of concrete action, particularly at local level, to achieve this.

Finally, I would like to thank the speakers who made this seminar a success, the interpreters who helped to make our intercultural dialogue possible and the whole team which helped to organise this encounter.

Our Seminar has come to an end and I wish you all a pleasant stay in Strasbourg and a safe return home.

This updated publication contains the *Committee of Ministers' Guidelines to member States on the protection and promotion of human rights in culturally diverse societies*, the *Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights*, as well as the *Proceedings of the High-level Seminar on human rights in culturally diverse societies* (Strasbourg, 13-14 June 2017).

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