5 March 2017

CDDH-INST(2017)005*restricted*

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

DRAFTING GROUP ON CIVIL SOCIETY AND NATIONAL HUMAN RIGHTS INSTITUTIONS

(CDDH-INST)

——

Relevant extracts of the research report prepared by Research and Library Division of the European Court of Human Rights on Non-Governmental Organisations in the case-law of the Court[1]

——

TABLE OF CONTENTS:

[1] Available only in French, this is an unofficial English translation.

I. NGOs before the Court

A. NGO as applicants

ARTICLE 34 of the Convention

Individual applications

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

- *Case of Radio France and others v. France*, No 53984/00, Judgment 30 March 2004

  26 (…) [T]he category of "governmental organisation" includes legal entities which participate in the exercise of governmental powers or run a public service under government control. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities.

- *The government of the Autonomous Community of the Basque Country*, No. 29134/03, Judgment 3 February 2004 *[available only in French]*

- *Case of the Holy Monasteries v. Greece* (No. 13092/87 13984/88), Judgment 9 December 1994

  48. In the first place, the Government argued that the applicant monasteries were not non-governmental organisations within the meaning of Article 25 (art. 25) of the Convention. They pointed to the Orthodox Church's and its institutions' historical, legal and financial links with the Hellenic nation and State, which were reflected in the 1975 Constitution itself and in legislation, and to the considerable influence which the Greek Church currently had on the State's activities. The attribution of legal personality in public law to the Church and its constituent parts - including the monasteries - showed the particular importance attached to ecclesiastical matters. Furthermore, the Greek Orthodox Church and its institutions played a direct, active part in public administration; they took enforceable administrative decisions whose lawfulness was subject to review by the Supreme Administrative Court like any other public authority's decisions. The monasteries were hierarchically integrated into the organic structure of the Greek Church; they were founded, merged or dissolved by a decree adopted after consultation of the archimandrite and approval by the Standing Holy Synod, on a proposal by the Minister for Education and Religious Affairs. The decisions of monastery councils had to be ratified by the supervising Church authority before they could take effect. Lastly, it was not decisive that the monasteries had legal personality distinct from that of the Church, witness the fact that it was possible for a State's international responsibility to be engaged on account of acts by legal entities distinct from that State.

  49. Like the Commission in its admissibility decision, the Court notes at the outset that the applicant monasteries do not exercise governmental powers. Section 39(1) of the Charter of the Greek Church describes the monasteries as ascetic religious institutions (see paragraph 15 above). Their objectives - essentially ecclesiastical and spiritual ones, but also cultural and social ones in some cases - are not such as to enable them to be classed with governmental organisations established for public-administration purposes. From the classification as public-law entities it may be inferred only that the legislature - on account of the special links between the monasteries and the State - wished to afford them the same legal

protection vis-à-vis third parties as was accorded to other public-law entities. Furthermore, the monastery councils' only power consists in making rules concerning the organisation and furtherance of spiritual life and the internal administration of each monastery (section 39(4) - see paragraph 15 above).

The monasteries come under the spiritual supervision of the local archbishop (section 39(2)), not under the supervision of the State, and they are accordingly entities distinct from the State, of which they are completely independent.

The applicant monasteries are therefore to be regarded as non-governmental organisations within the meaning of Article 25 (art. 25) of the Convention.

- *Case of Islamic Republic of Iran shipping v. Turkey* (No. 40998/98), Judgment 13 December 2007

80. In the light of the above principles, the Court notes that the applicant company is a corporate body which carries out commercial activities subject to the ordinary law of the Republic of Iran. It neither participates in the exercise of governmental powers nor has a public-service role or a monopoly in a competitive sector (see, in this connection, The Holy Monasteries v. Greece, 9 December 1994, § 49, Series A no. 301-A, and more recently, Österreichischer Rundfunk v. Austria, no. 35841/02, §§ 48-54, 7 December 2006). Although at the time of the events giving rise to the present application the applicant company was wholly owned by the State and currently an important part of its shares still belong to the State and a majority of the members of the board of directors are appointed by the State, it is legally and financially independent of the State, as transpires from Article 3 of the memorandum of association. (…)

81. That being so, it is true that governmental bodies or public corporations under the strict control of a State are not entitled to bring an application under Article 34 of the Convention (see Radio France and Others; Ayuntamiento de M.; Sixteen Austrian Communes and some of their Councillors; and RENFE, all cited above). However, the idea behind this principle is to prevent a Contracting Party acting as both an applicant and a respondent party before the Court. The circumstances of the present case are therefore different from those cited by the Government and the fact that the applicant company was incorporated in a State which is not party to the Convention makes no difference in this respect. Furthermore, the Court finds that the applicant company is governed essentially by company law, does not enjoy any powers beyond those conferred by ordinary law in the exercise of its activities and is subject to the jurisdiction of the ordinary rather than the administrative courts. Having regard to the foregoing, the Court considers that the applicant company is run as a commercial business and that therefore there is nothing to suggest that the present application was effectively brought by the Islamic Republic of Iran, which is not a party to the Convention.

82. It follows that the applicant company is entitled to bring an application under Article 34 of the Convention and that therefore the first part of the Government's objection should be dismissed.

In the light of these, the notion of "organisation non-governmental" in article 34 is extremely wide – significantly wider than those attributed at the national level. Thus, are "organisation non-governmental" the following:

- **Associations** in a conventional way (see for example : *Association Ekin v. France*, No. 39288/98, CEDH 2001-VIII, or *Association for European Integration and Human Rights and Eimdzhiev v. Bulgaria*, No. 62540/00, 28 June 2007);

- **Political parties** (see : *Freedom and Democratic Party (ÖZDEP) v. Turkey* [GC], No. 23885/94, CEDH 1999-VIII, or *Russian conservative party of entrepreneur and others v. Russia*, Nos. 55066/00 and 55638/00, CEDH 2007-I);
- **Trade unions** (for example: *Syndicat national des professionnels des procedures collectives c. France* [only in french], No. 70387/01, 20 juin 2006, and *Sindicatul "Păstorul Cel Bun" v. Romania* [GC], No. 2330/09 ECHR 2013);
- **Churches, religious organisations and confederations** (see *Cha'are Shalom Ve Tsedek v. France* [GC], No. 27417/95, ECHR 2000-VII, and *Holy Synod of the Bulgarian orthodox Church (Metropolitan Inokentiy) and others v. Bulgaria*, Nos. 412/03 and 35677/04, 22 January 2009);
- **Foundation** (*El Majjaoui & Stichting Touba Moskee v. the Netherlands*, (strike out) [GC], No. 25525/03, 20 December 2007);
- **Economic operators** as commercial business (for example *Sovtransavto Holding v. Ukraine*, No. 48553/99, ECHR 2002-VII, and *J.A. Pye (Oxford) ltd and J.A Pye (Oxford) and ltd v. the United Kingdom* [GC], No. 44302/02, ECHR 2007-X), or credit institution (*Capital Bank AD v. Bulgaria*, No. 49429/99, ECHR 2005-XII);
- **Estate** (*Case of the estate of Nitschke v. Sweden*, No. 6301/05, 27 September 2007).

ARTICLE 36§4 a) of the Rules of the Court

The representative acting on behalf of the applicant pursuant to paragraphs 2 and 3 of this Rule shall be an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.

- *Centre de ressources juridiques au nom de Valentin Câmpeanu c. Roumanie [GC]*, no 47848/08, CEDH 2014

> 104. This case concerns a highly vulnerable person with no next-of-kin, Mr Câmpeanu, a young Roma man with severe mental disabilities who was infected with HIV, who spent his entire life in the care of the State authorities and who died in hospital, allegedly as a result of neglect. Following his death, and without having had any significant contact with him while he was alive (see paragraph 23 above) or having received any authority or instructions from him or any other competent person, the applicant association (the CLR) is now seeking to bring before the Court a complaint concerning, amongst other things, the circumstances of his death.
>
> 105. In the Court's view the present case does not fall easily into any of the categories covered by the above case-law and thus raises a difficult question of interpretation of the Convention relating to the standing of the CLR. In addressing this question the Court will take into account the fact that the Convention must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory (see Artico v. Italy, 13 May 1980, § 33, Series A no. 37 and the authorities cited therein). It must also bear in mind that the Court's judgments "serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties" (see Ireland v. the United Kingdom, 18 January 1978, § 154, Series A no. 25, and Konstantin Markin v. Russia [GC], no. 30078/06, § 89, ECHR 2012). At the same time and, as

reflected in the above case-law concerning victim status and the notion of "standing", the Court must ensure that the conditions of admissibility governing access to it are interpreted in a consistent manner.

106. The Court considers it indisputable that Mr Câmpeanu was the direct victim, within the meaning of Article 34 of the Convention, of the circumstances which ultimately led to his death and which are at the heart of the principal grievance brought before the Court in the present case, namely the complaint lodged under Article 2 of the Convention.

107. On the other hand, the Court cannot find sufficiently relevant grounds for regarding the CLR as an indirect victim within the meaning of its case-law. Crucially, the CLR has not demonstrated a sufficiently "close link" with the direct victim; nor has it argued that it has a "personal interest" in pursuing the complaints before the Court, regard being had to the definition of these concepts in the Court's case-law (see paragraphs 97-100 above).

108. While alive, Mr Câmpeanu did not initiate any proceedings before the domestic courts to complain about his medical and legal situation. Although formally he was considered to be a person with full legal capacity, it appears clear that in practice he was treated as a person who did not (see paragraphs 14 and 16 above). In any event, in view of his state of extreme vulnerability, the Court considers that he was not capable of initiating any such proceedings by himself, without proper legal support and advice. He was thus in a wholly different and less favourable position than that dealt with by the Court in previous cases. These concerned persons who had legal capacity, or at least were not prevented from bringing proceedings during their lifetime (see paragraphs 98 and 100 above), and on whose behalf applications were lodged after their death.

109. Following the death of Mr Câmpeanu, the CLR brought various sets of domestic proceedings aimed at elucidating the circumstances leading up to and surrounding his death. Finally, once the investigations had concluded that there had been no criminal wrongdoing in connection with Mr Câmpeanu's death, the CLR lodged the present application with the Court.

110. The Court attaches considerable significance to the fact that neither the CLR's capacity to act for Mr Câmpeanu nor their representations on his behalf before the domestic medical and judicial authorities were questioned or challenged in any way (see paragraphs 23, 27-28, 33, 37-38 and 40-41 above); such initiatives, which would normally be the responsibility of a guardian or representative, were thus taken by the CLR without any objections from the appropriate authorities, who acquiesced in these procedures and dealt with all the applications submitted to them.

111. The Court also notes, as mentioned above, that at the time of his death Mr Câmpeanu had no known next-of-kin, and that when he reached the age of majority no competent person or guardian had been appointed by the State to take care of his interests, whether legal or otherwise, despite the statutory requirement to do so. At domestic level the CLR became involved as a representative only shortly before his death – at a time when he was manifestly incapable of expressing any wishes or views regarding his own needs and interests, let alone on whether to pursue any remedies. Owing to the failure of the authorities to appoint a legal guardian or other representative, no form of representation was or had been made available for his protection or to make representations on his behalf to the hospital authorities, the national courts and to the Court (see, mutatis mutandis, P., C. and S. v. the United Kingdom (dec.), no. 56547/00, 11 December 2001, and B. v. Romania (no. 2), cited above, §§ 96-97). It is also significant that the main complaint under the Convention concerns grievances under Article 2 ("Right to life"), which Mr Câmpeanu, although the direct victim, evidently could not pursue by reason of his death.

112. Against the above background, the Court is satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to the CLR to act as a representative of Mr Câmpeanu, notwithstanding the fact that it had no power of attorney to act on his behalf and that he died before the application was lodged under the Convention. To find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an

international level, with the risk that the respondent State might escape accountability under the Convention as a result of its own failure to appoint a legal representative to act on his behalf as it was required to do under national law (see paragraphs 59 and 60 above; see also, mutatis mutandis, P., C. and S. v. the United Kingdom, cited above, and The Argeş College of Legal Advisers v. Romania, no. 2162/05, § 26, 8 March 2011). Allowing the respondent State to escape accountability in this manner would not be consistent with the general spirit of the Convention, nor with the High Contracting Parties' obligation under Article 34 of the Convention not to hinder in any way the effective exercise of the right to bring an application before the Court.

(…)

114. Accordingly, the Court dismisses the Government's objection concerning the lack of locus standi of the CLR, in view of the latter's standing as de facto representative of Mr Câmpeanu.

- *Comité Helsinki bulgare c. Bulgarie*, Nos. 35653/12 and 66172/12, 21 July 2016 *[only in French]*

B. NGOs as a third party intervention

ARTICLE 36 of the Convention

Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

Since the creation of Protocol No.11 in 1998, NGOs were allowed to submit observations in **68 Grand chamber case-law**, such as:

– *Cha'are Shalom Ve Tsedek v. France* [GC], No 27417/95, ECHR 2000-VII: **the Jewish liturgical association** (on the freedom to practise one's religion through performance of the rite of ritual slaughter) ;

– *Kingsley v. the United* [GC], No. 35605/97, ECHR 2002-IV : ***Liberty (The National Council for Civil Liberties)*** (on just satisfaction under article 41 of the Convention);

– *Tahsin Acar v. Turkey* (preliminary issue), [GC], No. 26307/95, ECHR 2003-VI : ***Amnesty International*** (on the opportunity to strike the case out of its list and on the effective examination of applications);

– *Vo v. France* [GC], no 53924/00, CEDH 2004-VIII : ***Center for Reproductive Rights*** **and** ***Family Planning Association*** (on abortion and legal status of the foetus) ;

– *Pedersen et Baadsgaard c. Danemark* [GC], no 49017/99, ECHR 2004-XI : the Danish Union of Journalists (on freedom of expression of journalists);

– *Mamatkoulov and Askarov v. Turquie*, [GC], Nos 46827/99 et 46951/99, ECHR 2005-I : ***Human Rights Watch*** (situation of Muslims in Uzbekistan), ***AIRE Centre (Association for Individual Rights in Europe)*** (on diplomatic assurances) and the **International Commission of Jurists** (on the binding nature of interim measures adopted by the internationals bodies) ;

– *Natchova and others v. Bulgaria*, [GC], Nos 43577/98 et 43579/98, ECHR 2005-VII : the European Roma Rights Center (on Roma condition in Bulgaria), ***Open Society Justice Initiative*** (on discrimination) et ***Interights*** (on the issue of proof) ;

– *Baka v. Hungary* [GC], no 20261/12, ECHR 2016 : the **Hungarian Helsinki Committee** , the **Hungarian Civil Liberties Union,** the **Eötvös Károly Institute,** the **Helsinki Foundation for Human Rights** (based in Poland), and the **International Commission of Jurists** (on irremovability of judges and guarantees of the State of law) ;

– *Ibrahim and others v. the United-Kingdom* [GC], Nos 50541/08, 50571/08, 50573/08 and 40351/09, ECtHR 2016 : ***Fair Trials International*** (sur la question de savoir si une preuve recueillie en l'absence d'un avocat conformément à une restriction justifiée par des raisons impérieuses peut servir à condamner un accusé au pénal) ;

– *Muršić v. Croatia* [GC], No. 7334/13, 20 October 2016 : the **Observatoire international des prisons – section française (*OIP-SF*)**, **Ligue belge des droits de l'homme (*LDH*)** and **Réseau européen de contentieux pénitentiaire (*RCP*)** (on the notion of « *sufficient personal space* » in cells).

C. NGOs as a factual information source

- *NA. v. the United-Kingdom* No. 25904/07, 17 July 2008 and
- *Saadi v. Italy, No. 37201/06* No. 37201/06, 28 February 2008

> 119.[I]nassessing conditions in the proposed receiving country, the Court will take as its basis all the material placed before it or, if necessary material obtained proprio motu. It will do so, particularly when the applicant – or a third party within the meaning of the Article 36 of the Convention – provides reasoned grounds which cast doubt on the accuracy of the information relied on by the respondent Government. The Court must be satisfied that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or non-Contracting States, agencies of the United Nations and reputable non-governmental organisations (see Salah Sheekh, cited above, § 136; Garabayev v. Russia, no. 38411/02, § 74, 7 June 2007, ECHR 2007-... (extracts)). As

regards the general situation in a particular country, the Court has often attached importance to the information contained in recent reports from independent international human-rights-protection organisations such as Amnesty International, or governmental sources, including the US State Department (see Saadi v. Italy, cited above, § 131).

120. In assessing such material, consideration must be given to its source, in particular its independence, reliability and objectivity. In respect of reports, the authority and reputation of the author, the seriousness of the investigations by means of which they were compiled, the consistency of their conclusions and their corroboration by other sources are all relevant considerations (see Saadi v. Italy, cited above, § 143).

In the light of this, the Court has widely quoted reports from International NGOs, such as :

– ***Amnesty International*** (see among others, ase-law *Saadi v. Italie*, *NA. v. United-Kingdom*, and *Mamatkoulov and Askarov v. Turkey*, above-mentionned) ;

– ***Human Rights Watch*** (same case-law *Saadi and NA*, as well as *F.H. v. Sweden*, No. 32621/06, § 64, 20 January 2009);

– **International Helsinki Federation for human rights** (*Chamaïev and others c. Georgia and Russia*, no 36378/02, § 271, ECtHR 2005-III, and *Mouradova v. Azerbaïdjan*, No. 22684/05, §§ 73-74, 2 April 2009);

– **Reporters without borders** (*Gongadzé v. Ukraine*, No. 34056/02, ECtHR 2005-XI, and *Melnitchenko v. Ukraine*, No. 17707/02, § 11, ECtHR 2004-X) ;

– **Article 19** (*Ukrainian Media Group c. Ukraine*, No. 72713/01, § 35, 29 March 2005, and *Manole and others v. Moldova*, No. 13936/02, § 78, ECtHR 2009) ;

– ***Caritas International*** (*Paposhvili v. Belgium*, No. 41738/10, § 91, 17 April 2014).

II. NGOs as a civil society actor at national level

A. General legal principles regarding freedom of association

- *Bekir-Ousta and others v. Greece*, No. 35151/05, 11 October 2007 [*available only in French]*

- *Case of Christian Democratic People's Party v. Moldova*, No. 28793/02, 14 February 2006

62. The Court reiterates that, notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11. That applies all the more in relation to political parties in view of their essential role in ensuring pluralism and the proper functioning of democracy (see United Communist Party of Turkey and Others v. Turkey, 30 January 1998, §§ 42-43, Reports of Judgments and Decisions 1998-I).
(…)
64. Referring to the hallmarks of a "democratic society", the Court has attached particular importance to pluralism, tolerance and broadmindedness. In that context, it has held that, although individual interests

must on occasion be subordinated to those of a group, democracy does not simply mean that the views of the 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 (see Young, James and Webster v. the United Kingdom, 13 August 1981, § 63, Series A no. 44, and Chassagnou and Others v. France [GC], nos. 25088/94, 28331/95 and 28443/95, § 112, ECHR 1999-III).
(…)
69. Freedom of association and political debate is not absolute, however, and it must be accepted that where an association, through its activities or the intentions it has expressly or by implication declared in its programme, jeopardises the State's institutions or the rights and freedoms of others, Article 11 does not deprive the State of the power to protect those institutions and persons. It is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (see, mutatis mutandis, Observer and Guardian v. the United Kingdom, 26 November 1991, § 59, Series A no. 216).
(…)

B. Specific role assigned to NGOs as a "watchdog"

- *Vides Aizsardzibas Klubs v. Latvia*, No. 57829/00, 27 May 2004 *[only in French]*

- *Radio Twist, A.S. v. Slovakia*, No. 62202/00, 19 December 2006

48. An interference with a person's freedom of expression entails a violation of Article 10 of the Convention if it does not fall within one of the exceptions provided for in paragraph 2 of that Article. The Court therefore has to examine in turn whether such interference was "prescribed by law", whether it had an aim or aims that is or are legitimate under Article 10 § 2 and whether it was "necessary in a democratic society" for the aforesaid aim or aims (see, for example, The Sunday Times v. the United Kingdom (no. 1), 26 April 1979, § 45, Series A no. 30).

49. The adjective "necessary", within the meaning of Article 10 § 2, implies the existence of a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with a European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, Janowski v. Poland [GC], no. 25716/94, § 30, ECHR 1999-I).

50. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he or she made them. In particular, it must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, Barfod v. Denmark, 22 February 1989, § 28, Series A no. 149). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see, for example, Jersild v. Denmark, 23 September 1994, § 31, Series A no. 298).

C. Function of information

- *Women on Waves and others v. Portugal*, No. 312776/05, 3 February 2009 *[only in French]*

D. Political parties

- *United Communist Party of Turkey and others v. Turkey*, No. 133/1996/752/951, 30 January 1998

  24. The Court considers that the wording of Article 11 provides an initial indication as to whether political parties may rely on that provision. It notes that although Article 11 refers to "freedom of association with others, including the right to form … trade unions …", the conjunction "including" clearly shows that trade unions are but one example among others of the form in which the right to freedom of association may be exercised. It is therefore not possible to conclude, as the Government did, that by referring to trade unions – for reasons related mainly to issues that were current at the time – those who drafted the Convention intended to exclude political parties from the scope of Article 11.

E. Lawful restrictions to NGOs' right to freedom of expression and association

- *Castells v. Spain*, No. 11798/85, 23 April 1992

  46. The freedom of political debate is undoubtedly not absolute in nature. A Contracting State may make it subject to certain "restrictions" or "penalties", but it is for the Court to give a final ruling on the compatibility of such measures with the freedom of expression enshrined in Article 10 (art. 10) (see, mutatis mutandis, the Observer and Guardian judgment, cited above, Series A no. 216, para. 59 (c)).

- *Zhechev v. Bulgaria*, No. 57045/00, 21 June 2007

  47. An organisation may campaign for a change in the legal and constitutional structures of the State if the means used to that end are in every respect legal and democratic and if the change proposed is itself compatible with fundamental democratic principles (see Yazar and Others v. Turkey, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II; Refah Partisi (The Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 98, ECHR 2003-II; and The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria, no. 59489/00, § 59, 20 October 2005). (…)
  40. The mere fact that such a provision is capable of more than one construction does not mean that it fails to meet the requirement of "foreseeability" for the purposes of the Convention. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see Gorzelik and Others, cited above, § 65).

- *Herri Batasuna and Batasuna v. Spain*, Nos. 25803/04 and 25817/04, 30 June 2009

  79. [T]he Court also reiterates that a political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must in every respect be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds (see, mutatis mutandis, Socialist Party and Others, cited above, §§ 46 and 47; Partidul Comunistilor (Nepeceristi) and Ungureanu, cited above, § 46; Yazar and Others v. Turkey, nos. 22723/93, 22724/93 and 22725/93, § 49, ECHR 2002-II; and Refah Partisi (the Welfare Party) and Others, cited above, § 98).

  80. Admittedly, the Court has already considered that the constitution and programme of a political party cannot be taken into account as the sole criterion for determining its objectives and intentions. The content of the programme must be compared with the actions of the party's leaders and members and the positions

they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of a political party, provided that as a whole they disclose its aims and intentions (see United Communist Party of Turkey and Others, cited above, § 58, and Socialist Party and Others, cited above, § 48).

81. The Court nevertheless considers that a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent. The Court accepts that where the presence of such a danger has been established by the national courts, after detailed scrutiny subjected to rigorous European supervision, a State may "reasonably forestall the execution of such a policy, which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime" (see Refah Partisi (the Welfare Party) and Others, cited above, § 102).

82. The Court takes the view that such a power of preventive intervention on the State's part is also consistent with Contracting Parties' positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments but also to interference imputable to private individuals within non-State entities. A Contracting State may be justified under its positive obligations in imposing on political parties, which are bodies whose raison d'être is to accede to power and direct the work of a considerable portion of the State apparatus, the duty to respect and safeguard the rights and freedoms guaranteed by the Convention and the obligation not to put forward a political programme in contradiction with the fundamental principles of democracy (ibid., § 103).

83. In this connection, the Court points out that the adjective "necessary", within the meaning of Article 11 § 2, implies a "pressing social need". Accordingly, the Court's overall examination of the question whether the dissolution of a political party on account of a risk of democratic principles being undermined met a "pressing social need" (see, for example, Socialist Party and Others, cited above, § 49) must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently and reasonably imminent; and (ii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a "democratic society" (see Refah Partisi (the Welfare Party) and Others, cited above, § 104).

- *Kalifatstaat v. Germany*, No. 13828/04, 11 December 2006 *[available only in French]*

Information note : The banning of the applicant association amounted to interference with the exercise of its right to freedom of association. As to the lawfulness of the interference, the measure complained of had been based on domestic legislation which satisfied the requirements of clarity, accessibility and foreseeability. The measure had not been taken retrospectively, as the Associations Act had been amended before publication of the order in question. As to the aims pursued, the ban had pursued a number of legitimate aims under Article 11, in particular the interests of national security and public safety, the prevention of disorder and/or the prevention of crime, and the protection of the rights and freedoms of others. Finally, as to whether the interference had been proportionate, the courts had subjected the reasons given for banning the applicant association to detailed and rigorous scrutiny. The applicant association had acknowledged seeking to establish a worldwide Islamic regime based on sharia law which was incompatible with the fundamental democratic principles articulated in the Convention. The statements and conduct of the members of the association, and in particular of its leader, had been attributable to the association and had demonstrated that the latter did not rule out the use of force in order to attain its objectives. In the Court's view, it had been established convincingly that less stringent measures would not have sufficed to contain the real threat posed by the applicant to the State political system of the Federal Republic of Germany. Having regard to all these considerations, and taking the view that the aims of the applicant association had been contrary to the idea of a "democratic society", the Court found that the

penalty imposed on the applicant had been proportionate to the legitimate aims pursued: manifestly ill-founded.

- *Bozgan c. Romania*, No. 35097/02, 11 October 2007 *[available only in French]*

  Information note : The refusal to register the association had interfered with the applicant's right to freedom of association. The interference had been prescribed by law and pursued the legitimate aim of protecting national and public safety. The association's application had been refused solely on the basis of its articles of association. The domestic courts had relied on a mere suspicion that the association's intention was to set up parallel structures to the courts. That decision appeared arbitrary, however, in so far as the articles of association made no mention of any such intention. On the contrary, they stated that the association would abide by the law and not seek to take the place of the State authorities.Prior to applying for registration the association had given the courts no prima facie reason through its activities to believe that it might have anti-constitutional intentions contrary to those announced in its articles of association.In refusing to register it the authorities had prevented the association from being constituted.The law applicable in these matters allowed the courts to order the dissolution of an association if its aim proved to be unlawful or different from that mentioned in its articles of association. Consequently, a measure as radical as refusing to register an association even before it had engaged in any activities appeared to be disproportionate to the aim pursued and, accordingly, unnecessary in a democratic society. The application for registration had been rejected without the applicant having been informed of the alleged irregularities or given a chance to remedy them. Obliging him to start the registration procedure again from scratch was to impose too heavy a burden, especially as the law provided for him to remedy any irregularities as part of the initial application process. The refusal to register the association in the register of associations and foundations could therefore not reasonably be considered to have answered a pressing social need or to have been necessary in a democratic society.
  Conclusion: violation (unanimously).