



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## Guide on Article 9 of the European Convention on Human Rights

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Freedom of thought,  
conscience and religion

Updated on 31 August 2021

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## Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 9 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.\*

The Court’s judgments and decisions serve not only to decide those cases brought before it 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 (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI), and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a [List of keywords](#), chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The [HUDOC database](#) of the Court’s case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court’s reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the [HUDOC user manual](#).

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\* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (\*).

### Article 9 of the Convention – Freedom of thought, conscience and religion

“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.”

### HUDOC keywords

Positive obligations (9)

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Interference (9-2) – Prescribed by law (9-2): accessibility (9-2); foreseeability (9-2); safeguards against abuse (9-2) – Necessary in a democratic society (9-2): public safety (9-2); protection of public order (9-2); protection of health (9-2); protection of morals (9-2); protection of the rights and freedoms of others (9-2)

## Introduction

1. Freedom of thought, conscience and religion is a fundamental right which is enshrined not only in the European Convention on Human Rights but also in a wide range of national, international and European texts.

2. Under the terms of Article 9 of the Convention,

“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.”

3. Article 2 of Protocol No. 1 to the Convention concerns one specific aspect of freedom of religion, namely the right of parents to ensure the education of their children in accordance with their religious convictions:

“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 for their children in conformity with their own religious and philosophical convictions.”

4. Article 9 is often relied upon in conjunction with Article 14 of the Convention, which prohibits discrimination based on, among other things, religion and opinions (see, in this regard, [İzzettin Doğan and Others v. Turkey](#) [GC], §§ 160 and 165):

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without 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.”

5. Beyond the Convention, freedom of thought, conscience and religion is quite obviously also one of the United Nations’ main fundamental rights. For instance, under the terms of Article 18 of the

International Covenant on Civil and Political Rights, everyone has the right to freedom of thought, conscience and religion; this right includes freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching. No one may be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. Furthermore, Article 18 *in fine* specifies that the States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions. Article 26 of the Covenant sets forth a general non-discrimination principle, which also covers religion.

6. The principle of freedom of religion also appears in a number of other texts, including the International Convention on the Rights of the Child, Article 14 of which sets it out very clearly. Similarly, Article 12 of the American Convention on Human Rights states that everyone has the right to freedom of conscience and religion. This right includes the freedom to maintain or to change one's religion or beliefs, as well as the freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. No one may be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others. Lastly, Article 12 of the American Convention provides that parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

7. The European Union Charter of Fundamental Rights also protects freedom of thought, conscience and religion in the same way as the Convention (Article 10 of the Charter). It also lays down parents' right to "ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such ... right" (Article 14 § 3).

8. The importance of freedom of thought, conscience and religion has been emphasised on several occasions by the European Court of Human Rights. Broadly speaking, freedom of thought, conscience and religion is considered as one of the foundations of democratic society; more specifically, the European judges regards religious freedom as a vital factor in forming the identity of believers and their conception of life. In fact, the Court raised freedom of religion to the rank of a substantive right under the Convention, at first indirectly and, later on, more directly.

9. It should be noted that over the last fifteen years the number of cases examined by the Court under Article 9 has been constantly increasing; this trend can be explained by the increasing importance of religion and related matters in socio-political discourse.

## I. General principles and applicability

### A. The importance of Article 9 of the Convention in a democratic society and the locus standi of religious bodies

10. Freedom of thought, conscience and religion as enshrined in Article 9 of the Convention represents 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. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (*Kokkinakis v. Greece*, § 31; *Buscarini and Others v. San Marino* [GC], § 34).

11. An ecclesiastical or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (*Cha'are Shalom Ve Tsedek v. France* [GC], § 72; *Leela Förderkreis e.V. and Others v. Germany*, § 79). That means that a complaint lodged by a church or a religious organisation alleging a violation of the collective aspect of its adherents' freedom of religion is compatible *ratione personae* with the Convention, and the church or organisation may claim to be the “victim” of that violation within the meaning of Article 34 of the Convention.

12. On the other hand, in a case of denial of re-registration of an already recognised religious community, since that community had retained legal capacity to lodge an application with the Strasbourg Court, individual applicants could not themselves claim to be victims of a violation resulting from the domestic authorities' denial of re-registration, which affected only the applicant community as such. Their complaint under Article 9 was therefore incompatible *ratione personae* with the Convention (*Jehovah's Witnesses of Moscow and Others v. Russia*, § 168).

13. Although a *legal entity* can claim to be a victim of a violation of its freedom of *thought* and *religion*, it cannot exercise, as such, freedom of *conscience* (*Kontakt-Information-Therapie and Hagen v. Austria*, Commission decision).

### B. Convictions protected under Article 9

14. The word “religion” is defined neither by the text of Article 9 nor in the Court's case-law. This omission is quite logical, because such a definition would have to be both flexible enough to embrace the whole range of religions worldwide (major and minor, old and new, theistic and non-theistic) and specific enough to be applicable to individual cases – an extremely difficult, indeed impossible undertaking. On the one hand, the scope of Article 9 is very wide, as it protects both religious and non-religious opinions and convictions. On the other hand, not all opinions or convictions necessarily fall within the scope of the provision, and the term “practice” as employed in Article 9 § 1 does not cover each act which is motivated or influenced by a religion or belief (*Pretty v. the United Kingdom*, § 82).

15. In that connection, the Court points out that the Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective. The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith. At all events, these definitions may not be interpreted to the detriment of non-traditional forms of religion (*Izzettin Doğan and Others v. Turkey* [GC], § 114).



16. If a personal or collective conviction is to benefit from the right to “freedom of thought, conscience and religion” it must attain a *certain level of cogency, seriousness, cohesion and importance*. Provided this condition is satisfied, the State’s duty of neutrality and impartiality is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (*Eweida and Others v. the United Kingdom*, § 81). Therefore, it is not the Court’s task to enter into any controversy in that sphere or to determine what principles and beliefs are to be considered central to any given religion or to enter into any other sort of interpretation of religious questions (*İzzettin Doğan and Others v. Turkey* [GC], § 69; *Kovaļkovs v. Latvia* (dec.), § 60). In particular, a debate among religious scholars concerning the historical foundations of a given religion and the merits of the demands of its followers does not suffice to deny the religious nature of those beliefs (*Ancient Baltic religious association “Romuva” v. Lithuania\**, §§ 118-119). Hence in referring, for the purposes of its reasoning, to specific religious terms and concepts, the Court does not attach any particular significance to those terms beyond the finding that Article 9 is applicable to them (*ibid.* [GC], § 69). As a general rule, the fact that there is a debate within the religious community in question regarding the basic precepts of its faith and its demands *vis-à-vis* the State changes nothing for the purposes of the application of Article 9 (*ibid.* [GC], § 134).

17. The organs of the Convention have explicitly or implicitly acknowledged that the safeguards of Article 9 § 1 of the Convention apply to:

(a) the “major” or “ancient” world religions which have existed for millennia or for several centuries, such as:

- Alevism (*Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*; *İzzettin Doğan and Others v. Turkey*)
- Buddhism (*Jakóbski v. Poland*)
- the different Christian denominations (among many other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine*; *Savez crkava “Riječ života” and Others v. Croatia*)
- the various forms of Hinduism, including the *Hare Krishna* movement (*Kovaļkovs v. Latvia* (dec.); *Genov v. Bulgaria*)
- the various forms of Islam (*Hassan and Tchaouch v. Bulgaria* [GC]; *Leyla Şahin v. Turkey* [GC]), including Ahmadism (*Metodiev and Others v. Bulgaria*)
- Judaism (*Cha’are Shalom Ve Tsedek v. France* [GC]; *Francesco Sessa v. Italy*)
- Sikhism (*Phull v. France* (dec.); *Jasvir Singh v. France* (dec.))
- Taoism (*X. v. the United Kingdom*, Commission decision of 18 May 1976)

(b) new or relatively new religions or spiritual practices such as:

- Aumism of Mandarom (*Association des Chevaliers du Lotus d’Or v. France*)
- the Bhagwan Shree Rajneesh movement, known as Osho movement (*Leela Förderkreis e.V. and Others v. Germany*; *Mockutė v. Lithuania*, § 121)
- the Reverend Sun Myung Moon’s Unification Church (*Nolan and K. v. Russia*; *Boychev and Others v. Bulgaria*)
- Mormonism, or the Church of Jesus Christ of Latter-Day Saints (*The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*)
- the Raëlian Movement (*F.L. v. France* (dec.))
- Neo-Paganism (*Ásatrúarfélagið v. Iceland* (dec.)); *Ancient Baltic religious association “Romuva” v. Lithuania\**)
- Falun Gong, or Falun Dafa (*A.O. Falun Dafa and Others v. Moldova*)

- the “Santo Daime” religion, whose rituals include the use of a hallucinogenic substance known as “ayahuasca” (*Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands* (dec.))
- the Jehovah’s Witnesses (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*; *Jehovah’s Witnesses of Moscow and Others v. Russia*)

(c) various coherent and sincerely-held philosophical convictions, such as:

- pacifism (*Arrowsmith v. the United Kingdom*, Commission report, § 69)
- principled opposition to military service (*Bayatyan v. Armenia* [GC])
- veganism and opposition to the manipulation of products of animal origin or tested on animals (*W. v. the United Kingdom*, Commission decision)
- opposition to abortion (*Knudsen v. Norway*, Commission decision; *Van Schijndel and Others v. the Netherlands*, Commission decision)
- a doctor’s opinions on alternative medicine, constituting a form of manifestation of medical philosophy (*Nyyssönen v. Finland*, Commission decision)
- the conviction that marriage is a lifelong union between a man and a woman and rejection of homosexual unions (*Eweida and Others v. the United Kingdom*)
- attachment to secularism (*Lautsi and Others v. Italy* [GC], § 58; *Hamidović v. Bosnia and Herzegovina*, § 35).

18. Article 9 applies to the aforementioned beliefs and doctrines regardless of whether the respondent State officially recognises them as “religions”; to assume the contrary would be to consider that the State can exclude them for the protection of Article 9 by refusing to recognise them (*Mockutė v. Lithuania*, § 119). However, in case of doubt as to the “religious” nature of a system of beliefs and the applicability of Article 9, the Court can quite simply defer to the judgment of the authorities in the respondent State. This is what it has done with regard to two specific systems of ideas or beliefs, namely Scientology and Neo-Paganism.

19. Firstly, concerning *Scientology*, its classification as a “religion” is a bone of contention among the Contracting States. The Commission did not explicitly address this issue because the applications in question were in any case inadmissible for other reasons (*X. and Church of Scientology v. Sweden*, Commission decision; *Church of Scientology and Others v. Sweden*, Commission decision; *Scientology Kirche Deutschland e.V. v. Germany*, Commission decision). Nevertheless, at least in the first and third of the three cases cited above, the Commission would seem implicitly to have accepted that the Church of Scientology was a “religious group”.

20. The Court, which has directly tackled the Scientology issue, has, for its part, deferred to the judgment of the authorities in the respondent State. In a case concerning a refusal by the Russian authorities to register the Church of Scientology as a legal entity, the Court stated that it was not its task to decide *in abstracto* whether a body of beliefs and related practices could be considered a “religion” within the meaning of Article 9. In the instant case the local Centre of Scientology, which had initially been registered as a non-religious entity, was eventually dissolved on the ground that its activities were “religious in nature”. The national authorities, including the courts, had consistently expressed the view that Scientology groups were religious in nature. Under those circumstances the Court considered that Article 9 of the Convention was applicable to the case before it (*Kimlya and Others v. Russia*, §§ 79-81; see also *Church of Scientology of Moscow v. Russia*, § 64). In another case, the same type of interference had been partly based on a religious study which had concluded that the activities of the group in question were not religious in nature. However, the Court noted that the interference had taken place in pursuance of a legislative provision which applied exclusively to religious organisations, and that Article 9 was therefore well and truly applicable (*Church of Scientology of St Petersburg and Others v. Russia*, § 32).

21. Secondly, the Court has adopted the same approach to *Neo-Paganism*. In a case against Lithuania, a religious association embracing several communities adhering to the old Baltic faith had complained about the rejection of its request for “State recognition” of its status as a religious association. As the respondent Government had cast doubt on the “religious” nature of the applicant association’s activities and even the very existence of an “old Baltic faith” which it had claimed to follow, the Court noted that there was nothing reasonably to suggest that the applicant association’s beliefs did not attain the requisite level of cogency, seriousness, cohesion and importance. Therefore, contrary to the submissions of the respondent Government, the applicant association should not have been treated as equivalent to a movement parodying religions, like Pastafarianism, Jediism, and Dudeism. The applicant association had indeed been registered as a religious association for the purposes of domestic law, and the competent authorities had not disputed its religious nature during the debates in question (*Ancient Baltic religious association “Romuva” v. Lithuania*\*, §§ 117 and 139-140).

22. We might say that the answer to the question whether an activity which is wholly or partly based on a belief or a philosophy but which is *entirely profit-making* is eligible for protection under Article 9 is not yet completely clear. The Commission decided that a commercial limited-liability company, as a profit-making corporation – albeit one managed by a philosophical association – could neither benefit from nor rely upon the rights secured under Article 9 (*Company X. v. Switzerland*, Commission decision; *Kustannus OY Vapaa Ajatteliija AB and Others v. Finland*, Commission decision). Similarly, the Commission decided that Article 9 did not protect statements of purported religious belief which appear as selling “arguments” in advertisements of a purely commercial nature by a religious group. In this connection the Commission drew a distinction between advertisements which were merely “informational” or “descriptive” in character and commercial advertisements offering objects for sale. Once an advertisement enters into the latter category, even if it concerns religious objects central to a particular need, statements of religious content represent the manifestation of a desire to market goods for profit rather than the manifestation of a belief in practice. In the case which they considered, the Commission refused to extend the protection of Article 9 to an advertisement for an “E-meter” or “Hubbard Electrometer”, sanctioned by the consumer protection authorities (*X. and Church of Scientology v. Sweden*, Commission decision).

23. In more recent cases, however, the Commission and the Court would appear to leave it open whether Article 9 applies to a profit-making *activity* conducted by a religious organisation (the question arose in *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*; for yoga courses which were not free of charge, *Association Sivananda de Yoga Vedanta v. France*, Commission decision).

24. As regards *atheism*, the Commission considered complaints lodged by atheists under Article 9 (*Angeleni v. Sweden*, Commission decision). In a slightly different context it stated that this current of thought only expressed a certain metaphysical conception of man which conditioned his perception of the world and justified his action and therefore could not be validly distinguished from a religious denomination in the traditional sense; therefore, the State was not justified in assigning it a legal status radically different from that of other religious denominations (*Union des Athées v. France*, Commission’s report, § 79). Moreover, the Court has made it clear that freedom of thought, conscience and religion is “a precious asset for atheists, agnostics, sceptics and the unconcerned” (*Kokkinakis v. Greece*, § 31).

25. The Court has not yet issued a ruling on the applicability of Article 9 to *Freemasonry*; this question has been tacitly left open (*N.F. v. Italy*, §§ 35-40).

## C. The right to hold a belief and the right to manifest it

26. Article 9 § 1 of the Convention contains two strands, one on the right to *hold* a belief and the other on the right to *manifest* that belief:

- the right to deeply *hold* any belief (whether religious or not) and to change one's religion or beliefs. This right is *absolute and unconditional*; the State cannot interfere with it, for instance by dictating what a person believes or taking coercive steps to make him change his beliefs (*Ivanova v. Bulgaria*, § 79; *Mockutė v. Lithuania*, § 119) );
- the right to *manifest* one's beliefs alone and in private, but also to practice them in company with others and in public. This right is *not absolute*: since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9 § 2. This second paragraph 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 (*Eweida and Others v. the United Kingdom*, § 80). In other words, the limitations set out in Article 9 § 2 only relate to the freedom to manifest one's religion or belief and not to the right to *have* a religion or belief (*Ivanova v. Bulgaria*, § 79).

27. Article 9 § 1 guarantees “freedom ... in public or private, to manifest [one's] religion or belief”. However, the two parts of the alternative “in public or private” cannot be seen as mutually exclusive or as leaving the public authorities a choice; the wording merely points to the fact that religion may be practised in either way (*X. v. the United Kingdom*, Commission decision of 12 March 1981).

28. Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in any way inspired, motivated or influenced by that belief constitutes a “manifestation” of it. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only distantly connected to a precept of faith fall outside the protection of Article 9 § 1. In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. One example might be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; 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, applicants claiming that an act falls within their freedom to manifest their religion or beliefs are not required to establish that they acted in fulfilment of a duty mandated by the religion in question (*Eweida and Others v. the United Kingdom*, § 82; *S.A.S. v. France* [GC], § 55).

29. Accordingly, as a general rule, the domestic authorities are not justified in casting doubt on the *sincerity of the beliefs* which an individual claims to hold without supporting their position with solid, cogent evidence. The Court thus dismissed the following objections raised by respondent Governments:

- the French Government had argued that an applicant, who claimed to be a practising Muslim and wished to wear the full-face veil in public, had not shown that she was an adherent of Islam and that she wished to wear the veil for religious reasons. Moreover, the Court took the view that the fact that this was a minority practice among Muslim women did not affect its legal characterisation (*S.A.S. v. France* [GC], § 56);
- the Latvian Government had submitted that an applicant, a prisoner, was not a follower of *Vaishnavism* (the Vishnuite variant of Hinduism) on the grounds that he had taken a distance-learning Bible study course and that he did not formally belong to the local branch of the International Krishna Consciousness Society (*Kovaļkovs v. Latvia* (dec.), § 57); the Romanian Government put forward the very similar allegation to the effect that an applicant had probably claimed to be a Buddhist in order to obtain better food in prison (*Vartic v. Romania (no. 2)*, § 46).

30. Nevertheless, the organs of the Convention have accepted the *possibility of questioning the sincerity of an individual's alleged religion* in exceptional cases. Certainly, as already pointed out

above, it is not the Court's task to evaluate the legitimacy of religious claims or to question the validity or relative merits of interpretation of particular aspects of beliefs or practices. It is ill-equipped to delve into discussion about the nature and importance of individual beliefs, for what one person holds as sacred may be absurd or anathema to another and no legal or logical argument can be invoked to challenge a believer's assertion that a particular belief or practice is an important element of his religious duty. Nevertheless, this does not prevent the Court from making factual findings as to whether an applicant's religious claims are genuine and sincerely held (*Skugar and Others v. Russia* (dec.)).

31. For instance, the organs of the Convention refused to acknowledge the sincerity of the applicants' alleged religious beliefs:

- in the case of a prisoner who wished to be entered in the prison registers as an adherent of the "Wicca" religion. The Commission held that where such a register entry entails specific privileges and facilities to enable the person concerned to practice his religion it was reasonable to require the declared religion to be identifiable; however, the applicant had provided no information to ascertain the objective existence of such a religion (*X. v. the United Kingdom*, Commission decision of 4 October 1977);
- in a case of disciplinary sanctions imposed on an applicant, an employee of the national Electricity Company who had declared himself Muslim, for absence from work on two occasions during the same year to celebrate Muslim religious holidays. The domestic courts had acknowledged that the relevant law entitled citizens of Muslim faith to paid leave on the dates of the religious holidays; in the applicant's case however, the sincerity of his adherence to Islam was doubtful because he was ignorant of the basic tenets of that religion and because he had previously always celebrated Christian holidays. The domestic courts had therefore found that the applicant had claimed to be a Muslim solely in order to benefit from additional days of leave. The Court accepted that where the law established a privilege or special exemption for members of a given religious community – especially in the employment field – it was not incompatible with Article 9 to require the person concerned to provide some level of substantiation of his belonging to that community in order to be eligible for the said special treatment (*Kosteski v. the former Yugoslav Republic of Macedonia*, § 39).

32. The Court has afforded Article 9 protection to traditional practices which are objectively not part of the "core" precepts of an individual religion but which are heavily inspired by that religion and have deep cultural roots. Thus the Court accepted, without the least doubt, a complaint lodged by a couple of Muslim parents who wanted their under-age daughters to be exempted from compulsory mixed swimming lessons in a State school. Although the Koran laid down the precept that the female body was to be covered only from puberty, the applicants stated that their faith instructed them to prepare their daughters for the precepts that would be applied to them from puberty onwards (*Osmanoğlu and Kocabaş v. Switzerland*, § 42). Similarly, the Court explicitly accepted that a Muslim man's wish to wear a skullcap, which was not a strict religious duty but which nevertheless had such strong traditional roots that it was considered by many people to constitute a religious duty, was protected by Article 9 (*Hamidović v. Bosnia and Herzegovina*, § 30).

33. The organs of the Convention have refused to grant the protection of Article 9 § 1 (which does not mean that the same complaints could not, where appropriate, be examined under other provisions of the Convention) to:

- language freedom, including the right to use the language of one's choice in education and in contacts with the authorities (*Habitants d'Alsemberg and de Beersel v. Belgium*, Commission decision; *Inhabitants of Leeuw-St. Pierre v. Belgium*, Commission decision);



- a refusal to vote in general or presidential elections in a country in which turnout is compulsory (*X. v. Austria*, Commission decision of 22 April 1965; *X. v. Austria*, Commission decision of 22 March 1972);
- an applicant's demand to have his christening and confirmation cancelled (*X. v. Iceland*, Commission decision);
- a man who refused to enter into marriage with his partner in accordance with the procedure prescribed by civil law, while demanding that the State recognise their union as a valid marriage (*X. v. Germany*, Commission decision of 18 December 1974);
- a Buddhist prisoner's desire to send articles for publication in a Buddhist magazine, whereas the applicant had not shown how practising his religion required the publication of such articles (*X. v. the United Kingdom*, Commission decision of 20 December 1974);
- the distribution of tracts which, although based on pacifistic ideas, incited soldiers to be absent without leave and to infringe army discipline (*Arrowsmith v. the United Kingdom*, Commission report, §§ 74-75; *Le Cour Grandmaison and Fritz v. France*, Commission decision);
- an applicant's wish to have his ashes scattered on his property in order to avoid being buried in a cemetery amidst Christian symbols (*X. v. Germany*, Commission decision of 10 March 1981);
- a prisoner's wish to be recognised as a "political prisoner" and his refusal to work in prison, to wear prison uniform and to clean his cell (*McFeeley and Others v. the United Kingdom*, Commission decision; *X. v. the United Kingdom*, Commission decision of 6 March 1982);
- a practising Jew's refusal to hand over the *get* (letter of repudiation) after the civil divorce, which would have enabled his former wife to remarry under a religious ceremony (*D. v. France*, Commission decision);
- a doctor's refusal to subscribe to a professional old-age insurance scheme (*V. v. the Netherlands*, Commission decision);
- an association's wish to provide prisoners with legal advice and safeguard their interests for idealistic reasons (*Vereniging Rechtswinkels Utrecht v. the Netherlands*, Commission decision);
- a minister of religion who had been dismissed for refusing to discharge his administrative duties in a State Church in protest at a law relaxing the rules on abortion (*Knudsen v. Norway*, Commission decision);
- a man's wish to marry and have sexual relations with a girl under the legal age of sexual consent on the grounds that such a marriage was valid under Islamic law (*Khan v. the United Kingdom*, Commission decision);
- the applicant's wish to divorce (*Johnston and Others v. Ireland*, § 63);
- the desire of electricity consumers to avoid contractual obligations into which they had freely entered and their refusal to pay an electricity bill in full on the ground that a percentage of the corresponding amount would be allocated to financing a nuclear power station (*K. and V. v. the Netherlands*, Commission decision);
- a father's wish to inflict corporal punishment on his child (*Abrahamsson v. Sweden*, Commission decision);
- the refusal of two architects to subscribe to the Architects Association in breach of legal requirements (*Revert and Legallais v. France*, Commission decision);
- the wish to unfurl a banner bearing a political slogan in a railway station (*K. v. the Netherlands*, Commission decision);
- the content of an historical-political discussion held during a private party (*F.P. v. Germany*, Commission decision);

- an applicant's wish to have a free choice of doctor and to force his health insurance fund to refund a non-contracted doctor's fees (*B.C. v. Switzerland*, Commission decision; *Marty v. Switzerland*, Commission decision);
- an applicant's wish, albeit motivated by his Christian faith, to hand out tracts against abortion nearby an abortion clinic (*Van den Dungen v. the Netherlands*, Commission decision);
- a man who complained that the financial burden of the maintenance which he had to pay to his former wife and children prevented him from visiting Buddhist monasteries, the nearest one being located hundreds of miles from his home (*Logan v. the United Kingdom*, Commission decision);
- a father's refusals to pay maintenance to his under-age daughter on the grounds that she had changed her religion (*Karakuzey v. Germany*, Commission decision);
- a military judge, a Turkish air force colonel who had been retired on the grounds that "his behaviour and actions showed that he had adopted unlawful fundamentalist opinions"; in the instant case the impugned measure was based not on the applicant's religious opinions and beliefs or the manner in which he discharged his religious duties, but on his behaviour and actions, which infringed military discipline and the principle of secularism (*Kalaç v. Turkey*);
- a wish on the part of parents to give their child a particular forename without mentioning any religious motivation (*Salonen v. Finland*, Commission decision);
- a blunt refusal by a lawyer to take part in assignments to which he was officially assigned in order to represent persons remanded in police custody (*Mignot v. France*, Commission decision);
- a refusal by a driver to fasten his seatbelt while driving a motor car in order to express the view that he should be allowed to choose his own means of protecting his physical and mental integrity (*Viel v. France* (dec.));
- an Algerian national active in the Islamic Salvation Front who complained of a decision by the Swiss authorities to seize his communication media which he had been using for purposes of political propaganda (*Zaoui v. Switzerland* (dec.));
- a refusal by the joint owners of a pharmacy to sell the contraceptive pill (*Pichon and Sajous v. France* (dec.));
- a desire to commit assisted suicide motivated by commitment to the principle of personal autonomy (*Pretty v. the United Kingdom*, § 82);
- the applicants' wish to continue judicial proceedings instigated by their husband/father, who had since died, against the appointment of a mufti (*Sadik Amet and Others v. Greece* (dec.));
- a student who had been denied access to a university campus on the ground that he had a beard, although he had never claimed to be inspired by any specific ideas or beliefs, whether religious or otherwise (*Tiğ v. Turkey* (dec.));
- the desire to place a memorial stone on a family member's grave incorporating a photograph of the deceased (*Jones v. the United Kingdom* (dec.));
- persons convicted of membership of organisations considered as terrorist (see, among many other authorities, *Gündüz v. Turkey* (dec.); *Kenar v. Turkey* (dec.));
- a judge who had been reprimanded for refusing to consider cases because he felt biased (*Cserjés v. Hungary* (dec.)), and a doctor employed by a public health insurance department who had been dismissed for refusing to conduct a medical examination of an apprentice, because he feared a "possible bias" which could lead to difficulties if he had to work with the apprentice in the future (*Blumberg v. Germany* (dec.));

- a nun sentenced to a fine for causing a disturbance during a religious ceremony by making loud statements during prayers (*Bulgaru v. Romania* (dec.));
- a father living on unemployment benefit who complained of the municipal authorities' refusal to refund the cost of a Christmas tree and an Advent wreath (*Jenik v. Austria* (dec.); application dismissed as abusive within the meaning of Article 35 § 3 a) of the Convention);
- a father who had been judicially separated from his wife and who objected to his under-age daughter (custody of whom had been entrusted to the mother) being raised in the Roman Catholic religion, even though, according to the domestic courts, the mother had merely been acting in accordance with the daughter's freely-expressed choice (*Rupprecht v. Spain* (dec.));
- two Jewish organisations which had asked the Ukrainian courts to restore the former boundaries of several old Jewish cemeteries in various towns in Ukraine (which had been abandoned for over seventy years) and to prohibit building work on them (see *Representation of the Union of Councils for Jews in the Former Soviet Union and Union of Jewish Religious organisations of Ukraine v. Ukraine* (dec.));
- an applicant's wish to walk naked in public on the basis of his belief that such behaviour was socially acceptable (*Gough v. the United Kingdom*, §§ 185-188);
- an application for the registration of a trademark for purely commercial purposes, even though the trademark in question comprised religious graphic symbols (*Dor v. Romania* (dec.), § 39);
- the domestic authorities' refusal to disclose to a religious association all the information which they had obtained concerning it (*Das Universelle Leben Aller Kulturen Weltweit e.V. v. Germany* (dec.), § 34);
- an application from a religious community for restored ownership of a building of worship confiscated by the communist authorities in the 1930s (*Rymsko-Katolytska Gromada Svyatogo Klimentiya v. Misti Sevastopoli v. Ukraine* (dec.), §§ 59-63);
- an applicant's refusal to carry out his compulsory military service on the grounds, not of any objection on principle to war or the carrying of weapons, but of his denial of the legitimacy of the current constitutional State system, even though that denial was religiously motivated (*Enver Aydemir v. Turkey*, §§ 79-84);
- an alien whose application for naturalisation was rejected on the grounds that he was an activist in a radical Islamist organisation, which cast doubt on his loyalty to the host State (*Boudelal v. France* (dec.)).

34. The Court has not yet formally determined the question whether the guarantees of Article 9 of the Convention apply to a refusal to be vaccinated or to have one's under-age children vaccinated on the basis of a critical stance on vaccination. That question was briefly addressed by the Commission, which stated that since Article 9 did not always protect the right to behave in public in a manner based on one's religious convictions and compulsory vaccination applied to everyone, whatever their religion or personal convictions, there had been no interference with the exercise of the rights secured under the article in question (*Boffa and Others v. San Marino*, Commission decision). On the other hand, the Court has not made any general pronouncement on this issue. In the case of *Vavříčka and Others v. the Czech Republic* [GC] concerning the various consequences for parents of under-age children of failure to comply with the legal duty of vaccination (in particular, the exclusion of children from pre-school facilities and fines for the parents), the Court ruled that the applicants had not sufficiently substantiated their complaint. Therefore, in the particular circumstances of the case, their critical opinion on vaccination was not such as to constitute a conviction or belief of sufficient cogency, seriousness, cohesion and importance, such that their complaint was incompatible *ratione materiae* with Article 9 (*ibid.*, §§ 334-337). The Court nevertheless pointed out that if parents relied on Article 9 of the Convention without mentioning any religious reasons for



their position on vaccines, it was not their freedom of religion that was potentially at stake but their freedom of thought and conscience (*ibid.*, § 330).

## D. Negative and positive obligations on the State

### 1. Interference in the exercise of protected rights and justification thereof

35. Under the terms of Article 9 § 2 of the Convention, the legitimate aims liable to justify interference in an individual's manifestation of his religion or beliefs are *public safety, the protection of public order, health and morals, or the protection of the rights and freedoms of others*. This enumeration of legitimate aims is strictly exhaustive and the definition of the aims is necessarily restrictive; if a limitation of this freedom is to be compatible with the Convention it must, in particular, pursue an aim that can be linked to one of those listed in this provision (*Svyato-Mykhaylivska Parafiya v. Ukraine*, §§ 132 and 137; *S.A.S. v. France* [GC], § 113).

36. In contrast to Articles 8 § 2, 10 § 2 and 11 § 2 of the Convention and Article 2 § 3 of Protocol No. 4, “*national security*” is not included among the aims listed in Article 9 § 2. This omission is by no means accidental; on the contrary, the refusal by the drafters of the Convention to include this specific ground among the legitimate grounds of interference reflects the fundamental importance of religious pluralism as “one of the foundations of a democratic society” and of the fact that the State cannot dictate what a person believes or take coercive steps to make him change his beliefs (*Nolan and K. v. Russia*, § 73). This means that the State cannot use the need to protect national security as the sole basis for restricting the exercise of the right of a person or a group of persons to manifest their religion. The same applies to the necessity for “maintaining the authority and impartiality of the judiciary”, which legitimate aim is set out in Article 10 § 2 of the Convention but not in Article 9 § 2 (*Hamidović v. Bosnia and Herzegovina*, § 35, and *Lachiri v. Belgium*, § 38).

37. Moreover, it should be noted that Article 15 of the Convention authorises States to derogate from their obligations under Article 9 “to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with (their) other obligations under international law”, with the further proviso that the procedural formalities set out in Article 15 § 3 are complied with.

38. *Interference* in the exercise of the rights secured under Article 9 of the Convention may, for instance, take the form of:

- a criminal or administrative penalty, a dismissal or non-renewal of contract for having exercised the rights in question (*Kokkinakis v. Greece*; *Ivanova v. Bulgaria*; *Masaev v. Moldova*; *Ebrahimian v. France*);
- a disciplinary sanction, regardless of its severity (*Korostelev v. Russia*, § 50);
- psychological pressure exerted by State representatives on a highly vulnerable person to abandon her beliefs (*Mockutė v. Lithuania*, §§ 123-125);
- a physical obstacle to the persons exercising their rights under Article 9, such as the interruption of a meeting by the police (*Boychev and Others v. Bulgaria*);
- the dissolution of a religious organisation (*Jehovah's Witnesses of Moscow and Others v. Russia*, §§ 99-103; *Biblical Centre of the Chuvash Republic v. Russia*, § 52; this contrasts with older Commission case-law to the effect that the dissolution and prohibition of a religious association did not infringe the freedom of religion of an individual, namely *X. v. Austria*, Commission decision of 15 October 1981);
- denial of authorisation, recognition or approval designed to facilitate the exercise of the said rights (*Metropolitan Church of Bessarabia and Others v. Moldova*; *Vergos v. Greece*);

- denial by the domestic authorities of a religious community's status as a specific religion, where such denial is liable to cause a series of practical problems and difficulties (*İzzettin Doğan and Others v. Turkey* [GC], § 95) ;
- enactment of an ostensibly neutral law which has the effect of allowing the State to interfere directly in an intra-denominational dispute (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, § 157);
- the use in official documents of pejorative expressions against a religious community, insofar as it may lead to negative consequences for the exercise of freedom of religion (*Leela Förderkreis e.V. and Others v. Germany*, § 84).

39. Even if, in carrying out the act constituting interference with a right under Article 9, a State representative – a police officer, for instance – is acting *ultra vires* (that is to say, acting in excess of his authority), that act is nevertheless attributable to the respondent State and incurs its responsibility for the purposes of Article 1 of the Convention (*Tsartsidze and Others v. Georgia*, § 80).

40. On the other hand, as a general rule, there is no interference with the exercise of the rights secured under Article 9 in the case of legislation the operation of which is provided for by the Convention and which is generally and neutrally applicable in the public sphere, without impinging on the freedoms guaranteed by Article 9 (*C. v. the United Kingdom*, Commission decision; *Skugar and Others v. Russia* (dec.)).

41. If the alleged interference takes the form of a refusal of a special exemption bestowed upon a group of persons due to their religious beliefs or convictions, it is not oppressive or in fundamental conflict with Article 9 to require some level of substantiation of genuine belief and, if that substantiation is not forthcoming, to reach a negative conclusion (*Kosteski v. the former Yugoslav Republic of Macedonia*, § 39, *Dyagilev. v Russia*, § 62, *Neagu v. Romania*, § 34).

42. Where applicants complain of the *existence in domestic law of a penalty imposed for an action which they intend to take* and where they lay claim to the protection afforded by Article 9, they can claim to be “victims”, within the meaning of Article 34 of the Convention, if they are required either to modify their conduct or risk being prosecuted, or if they are members of a category of persons who risk being directly affected by the legislation in question. Thus, for instance, the Court acknowledged that a Muslim woman wishing to wear the full-face veil in public for religious reasons could claim to be a “victim” solely because such conduct was punishable by law, by means of a fine accompanied or replaced by a compulsory citizenship course. The applicant was thus confronted with a dilemma: either she complied with the ban and refrained from dressing in accordance with her approach to religion; or she refused to comply and faced prosecution (*S.A.S. v. France* [GC], § 57).

43. States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public order (*Manoussakis and Others v. Greece*, § 40; *Metropolitan Church of Bessarabia and Others v. Moldova*, § 105). In some cases the State can take preventive action to protect the fundamental rights of others; such a power of preventive intervention on the State's part is fully consistent with the positive obligation under Article 1 of the Convention to the effect that the Contracting States must “secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention” (*Leela Förderkreis e.V. and Others v. Germany*, § 99).

44. In a democratic society, 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. However, 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. What is at stake here is the

preservation of pluralism and the proper functioning of democracy (*Metropolitan Church of Bessarabia and Others v. Moldova*, §§ 115-116).

45. The Court's task is to determine whether the measures taken at national level are justified in principle and proportionate (*Leyla Şahin v. Turkey* [GC], § 110). That means that *there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned*; on that point, the burden is on the authorities to show that no such measures were available (*Biblical Centre of the Chuvash Republic v. Russia*, § 58). It is implicit in Article 9 § 2 of the Convention that any interference must correspond to a "pressing social need"; thus the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 116). When the Court exercises its supervision, its task is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". 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 relied on an acceptable assessment of the relevant facts (*Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, § 98). In particular, a domestic court cannot absolve itself of its obligations by merely endorsing an expert report; all legal matters must be resolved exclusively by the courts (see, under Article 10 read in the light of Article 9, *Ibragim Ibragimov and Others v. Russia*, §§ 106-107).

46. When assessing whether or not an interference is proportionate the Court grants the States Parties to the Convention a certain *margin of appreciation* in evaluating the existence and extent of the need for that interference. We should remember that the role of the Convention mechanism is fundamentally subsidiary. The national authorities are, in principle, better placed than an international court to evaluate local needs and conditions and, as a result, in matters of general policy, on which opinions within a democratic society may reasonably differ, the role of the domestic policy-maker should be given special weight, particularly where such matters concern relations between the State and religious denominations. As regards Article 9 of the Convention, in principle, the State should be granted a wide margin of appreciation in deciding whether and to what extent a restriction on the right to manifest one's religion or beliefs is "necessary". Nevertheless, in determining the extent of the margin of appreciation in a given case, the Court must also take account of both the specific issue at stake in that case and the general issue covered by Article 9, namely the need to preserve genuine religious pluralism, which is vital for the survival of any democratic society. Major importance should be attached to the necessity of the interference where it must be determined, as required by Article 9 § 1, whether the interference meets an "overriding social need" and is "proportionate to the legitimate aim pursued". Clearly, this margin of appreciation goes hand in hand with European supervision embracing both the law and the decisions applying it, even where they are issued by an independent domestic court. In this connection 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 (*Bayatyan v. Armenia* [GC], §§ 121-122; *S.A.S. v. France* [GC], § 129).

47. Furthermore, when assessing whether or not an interference is proportionate and gauging the margin of appreciation available to the respondent State, the Court has always been mindful of the specific features of federalism, so long as they are compatible with the Convention (*Osmanoğlu and Kocabaş v. Switzerland*, § 99).

48. Similarly, in assessing the conformity of a domestic measure with Article 9 § 2 of the Convention, the Court must take account of the historical background and special features of the

religion in question, covering dogma, observance, organisation and so on (for two practical examples of this approach, see *Cha'are Shalom Ve Tsedek v. France* [GC], §§ 13-19; *Miroļubovs and Others v. Latvia*, §§ 8-16). This is a logical consequence of the general principles underpinning Article 9, that is to say freedom to practice a religion in public or private, the internal autonomy of religious communities and respect for religious pluralism. In view of the subsidiary nature of the mechanism for protecting individual rights established by the Convention, the same obligation may also be incumbent on the national authorities in taking binding decisions in their relations with various religions (*Miroļubovs and Others v. Latvia*, § 81). In this regard, the Court usually refers to its case-law under Article 14 of the Convention (prohibition of discrimination), according to which this provision may, under certain circumstances, be violated when States fail to treat differently persons whose situations are significantly different (*Thlimmenos v. Greece* [GC], § 44). However, the scope of the margin of appreciation granted by the Court to the national authorities could in no case depend on the nature and content of the beliefs in question (*Ancient Baltic religious association "Romuva" v. Lithuania*\*, § 146).

49. Where domestic law makes the exercise of the right to freedom of religion or of one of its aspects subject to a system of prior authorisation, the involvement in the procedure for granting authorisation of a recognised ecclesiastical authority – particularly an authority belonging to a different denomination, hierarchy or persuasion – cannot be reconciled with the requirements of paragraph 2 of Article 9 (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 117; *Vergos v. Greece*, § 34; *Ancient Baltic religious association "Romuva" v. Lithuania*\*, § 144; and, *mutatis mutandis*, *Pentidis and Others v. Greece*).

50. Lastly, in exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 119). It must, if need be, assess all the facts of the case and consider the sequence of events in their entirety, rather than as separate and distinct incidents (*Ivanova v. Bulgaria*, § 83). Moreover, the Court must always satisfy itself that decisions taken by the State authorities in the field of freedom of religion are based on an acceptable assessment of the relevant facts (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 138).

## 2. Positive obligations on Contracting States

51. Under the terms of Article 1 of the Convention, the Contracting States must “secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention”. Therefore, the rather negative obligation on a State to refrain from interfering in the rights guaranteed by Article 9 may be combined with the *positive obligations* inherent in those rights – *inter alia* where the impugned acts were committed by private agents and are thus not directly attributable to the respondent State. Therefore, these obligations can sometimes necessitate measures to ensure respect for freedom of religion affecting the very fabric of *individuals’ interpersonal relations* (*Siebenhaar v. Germany*, § 38). Although the boundary between the State’s positive and negative obligations under the Convention is not susceptible to an exact definition, the applicable principles are nonetheless comparable (*Izzettin Doğan and Others v. Turkey* [GC], § 96). In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain *margin of appreciation*. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 9, the aims mentioned in the second paragraph may be of a certain relevance (*Jakóbski v. Poland*, § 47; *Eweida and Others v. the United Kingdom*, § 84). The Court can sometimes refrain from formally adjudicating whether the situation should be examined in terms of the State’s “negative obligations” or “positive obligations” (*Religious Community of Jehovah’s Witnesses of Kryvyi Rih’s Ternivsky District v. Ukraine*, § 58).

52. The positive obligations under Article 9 may involve the provision of an effective and accessible means of protecting the rights guaranteed under that provision, including both the provision of a

regulatory framework of adjudicatory and enforcement machinery protecting individuals' rights and the implementation, where appropriate, of specific steps (*Osmanoğlu and Kocabaş v. Switzerland*, § 86).

53. Article 9 does not guarantee, as such, the right to benefit from *preventive measures* to protect freedom of religion (*Hernandez Sanchez v. Spain*, Commission decision).

## E. Overlaps between the safeguards of Article 9 and the other Convention provisions

54. By its very nature, the substantive content of Article 9 of the Convention may sometimes overlap with the content of other provisions of the Convention; in other words, one and the same complaint submitted to the Court can sometimes come under more than one article. In such cases the Court usually opts for assessing the complaint under only one article, which it considers more relevant in the light of the specific circumstances of the case; however, in so doing, it also bears the other article(s) in mind and interprets the article which it had opted to consider in the light of the latter. The articles most likely to be involved alongside Article 9 for the same facts and the same complaints are as follows:

(a) *Article 6 § 1 of the Convention* (right to a fair trial, particularly the right of access to a tribunal). In a case concerning a refusal by the Greek Court of Cassation to recognise the legal personality of the Cathedral of the Roman Catholic diocese of Crete, thereby denying it *locus standi* to protect its property, the Court decided to assess the applicant body's complaints solely under Article 6 § 1 of the Convention rather than under Article 9 (*Canea Catholic Church v. Greece*, §§ 33 and 50). Similarly, in a case of an alleged failure to enforce a final judgment acknowledging the right of a parish and its members to bury their dead in the local cemetery in accordance with their specific rites, the Court decided to consider the complaint solely under Article 6 § 1 (*Greek Catholic Parish of Pesceana v. Romania* (dec.), § 43);

(b) *Article 8 of the Convention* (right to respect for private and/or family life). The Court has considered applications:

- solely under Article 8, on its own or in conjunction with Article 14: for example, as regards a decision by the domestic courts to establish the under-age children's residence with one of the parents essentially because the other parent was a Jehovah's Witness (*Hoffmann v. Austria*; *Palau-Martinez v. France*; *Ismailova v. Russia*). The Court pointed out that the practical arrangements for exercising parental authority over children defined by the domestic courts could not, as such, infringe an applicant's freedom to manifest his or her religion (*Deschomets v. France* (dec.));

- under Article 8, read in the light of Article 9: as regards the transfer of a civil servant because of his religious convictions, which were known to others but nonetheless were solely a private matter, and also his wife's religious behaviour (*Sodan v. Turkey*, § 30);

(c) *Article 10* (freedom of expression). The Court considered applications:

- solely under Article 10: for example, as regards a prohibition imposed by the competent State body on an independent radio station broadcasting a paid advertisement of a religious nature (*Murphy v. Ireland*), or the refusal by the competent body to grant a broadcasting licence for a radio station with Christian religious programming (*Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*). Thus, in so far as the applicant complains of interference with the expression of his beliefs and opinions by broadcasting information, Article 10 constitutes a *lex specialis* in relation to Article 9, so that a separate assessment under the latter is unnecessary (*Balsytė-Lideikienė v. Lithuania* (dec.));

- under Article 10 read in the light of Article 9: for example, as regards a prohibition on publishing and distributing religious books (*Ibragim Ibragimov and Others v. Russia*, § 78).



(d) *Article 11* (freedom of assembly and association). The Court has considered applications:

solely under Article 9: for example, as regards a complaint submitted by a conscientious objector who did not belong to any religious or pacifist organisation, and who relied on Article 11 to allege that the rejection of his request for exemption from military service constituted a breach of his negative freedom not to be a follower of a particular religion or a member of any kind of organisation (*Papavasiliakis v. Greece*, §§ 34-35) ;

- under Article 9 as interpreted in the light of Article 11: for example as regards State interference in a dispute between two rival groups within the same religious community (*Hassan and Tchaouch v. Bulgaria* [GC], § 65), the dissolution of a religious organisation (*Jehovah's Witnesses of Moscow and Others v. Russia*, §§ 102-103), the protracted refusal to recognise the legal personality of a religious community (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 60), or measures to prevent a religious association from building a place of worship on a plot of land which it owned (*The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, § 80) ;
- under Article 9 as interpreted in the light of Articles 11 and 6 § 1: for example as regards a refusal by the domestic authorities to register changes to the statutes of a religious organisation geared to ratifying the organisation's change of denomination (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 152);
- under Article 11 (freedom of association) as interpreted in the light of Article 9 – for example as regards a refusal to register a religious organisation (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*, § 61), or to renew its registration (*Moscow Branch of the Salvation Army v. Russia*, §§ 74-75; *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*, § 46). See, to converse effect, the judgments in the cases of *Genov v. Bulgaria*, § 38, and *Metodiev and Others v. Bulgaria*, § 26, in which the Court decided to consider a refusal to register a religious organisation under Article 9 read in the light of Article 11;
- under Article 11 (freedom of assembly) as interpreted in the light of Article 9 – for example as regards a refusal to renew the registration of a religious organisation (*Moscow Branch of the Salvation Army v. Russia*, §§ 74-75);
- under Article 11 (freedom of assembly) as interpreted in the light of Article 9: for example as regards a denial of access for a group practising Neo-Druidism to the historic site of Stonehenge to celebrate the summer solstice (*Pendragon v. the United Kingdom*, Commission decision; to converse effect, see also *Chappell v. the United Kingdom*, Commission decision);

(e) *Article 1 of Protocol No. 1* (protection of property). The Court has chosen to consider cases solely under Article 1 of Protocol No. 1: for example as regards the obligation on landowners who are personally opposed to hunting to tolerate it on their land (*Chassagnou and Others v. France* [GC]; *Herrmann v. Germany* [GC]);

(f) *Article 2 of Protocol No. 1* (right of parents to respect for their religious and philosophical convictions in the framework of their children's education). The Court has chosen to consider cases

- solely under Article 2 of Protocol No. 1: for example as regards the administration of compulsory classes in religious culture and morals in State schools, and the restricted opportunities for administering such classes (*Mansur Yalçın and Others v. Turkey*), or a refusal by educational authorities to grant children complete exemption from compulsory classes on Christianity (*Folgerø and Others v. Norway* [GC]);
- under Article 2 of Protocol No. 1 and Article 9 of the Convention taken alone, finding no violation of the former on the basis of an elaborate argumentation and no violation of the

latter with simple reference to that argumentation (*Kjeldsen, Busk Madsen and Pedersen v. Denmark*);

- under Article 2 of Protocol No. 1 as interpreted in the light of Article 9: for example as regards the compulsory presence of crucifixes in classrooms in State schools (*Lautsi and Others v. Italy* [GC]);
- under Article 2 of Protocol No. 1 for the parents and Article 9 of the Convention for the child, as regards punishment inflicted by a head teacher on a pupil for refusing to take part in a school parade (*Valsamis v. Greece*), or participation by a student in a religious ceremony at school without his parents' consent (*Perovy v. Russia*).
- solely under Article 9: for example, as regards a refusal to exempt the applicants' children from compulsory mixed swimming lessons (*Osmanoğlu and Kocabaş v. Switzerland*, §§ 35 and 90) – essentially because the respondent State, Switzerland, had not ratified Protocol No. 1.

55. In the field of education and teaching, Article 2 of Protocol No. 1 is basically a *lex specialis* in relation to Article 9 of the Convention. This applies at least where, as in the present case, the issue at stake is the obligation on the Contracting States – as set out in the second sentence of this article – to respect, in the exercise of any functions which they assume in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (*Lautsi and Others v. Italy* [GC], § 59; *Osmanoğlu and Kocabaş v. Switzerland*). Children themselves benefit from the safeguards surrounding freedom of religion and can rely on Article 9 in a personal capacity (*Perovy v. Russia*, § 49). In that connection, the first sentence of Article 2 of Protocol No. 1 read in the light of the second sentence of that provision and of Article 9 of the Convention guarantees schoolchildren the right to education in a form which respects their right to believe or not to believe (*Ibid.*, § 50).

## II. Actions protected under Article 9

### A. Negative aspect

#### 1. The right not to practice a religion or to reveal one's beliefs

56. Freedom of religion also involves negative rights, that is to say the freedom not to belong to a religion and not to practice it (*Alexandridis v. Greece*, § 32). That means that the State cannot require a person to conduct an act which might reasonably be seen as swearing allegiance to a given religion. For instance, the Court found that there had been a violation of Article 9 of the Convention as a result of a legal requirement on the applicants to take the oath on the Gospels on pain of forfeiting their parliamentary seats (*Buscarini and Others v. San Marino* [GC], §§ 34 and 39).

57. On the other hand, no religious group or individual can claim the right not to witness individual or collective manifestations of other religious or non-religious beliefs and convictions (*Perovy v. Russia*, § 73).

58. The negative aspect of freedom to manifest one's religious beliefs also means that individuals cannot be required to reveal their religious affiliation or beliefs; nor can they be forced to adopt behaviour from which it might be inferred that they hold – or do not hold – such beliefs. State authorities are not free to interfere in individuals' freedom of conscience by asking them about their religious beliefs or forcing them to express those beliefs (*Alexandridis v. Greece*, § 38; *Dimitras and Others v. Greece*, § 78; *Stavropoulos and Others v. Greece*, § 44).

59. Moreover, such interference can be indirect; for example, when an official document issued by the State (identity card, school report, etc.) has a religion box, leaving that box blank inevitably has a specific connotation. In the particular case of identity cards, the Court has ruled that the indication – whether obligatory or optional – of religion on such cards is contrary to Article 9 of the Convention (*Sinan Işık v. Turkey*, §§ 51-52 and 60). Nor does Article 9 secure a right to record one's religion on one's identity card, even on a voluntary basis (*Sofianopoulos and Others v. Greece* (dec.)). The Court has also refused to recognise the need to mention religion in civil registers or on identity cards for demographic purposes, as that would necessarily involve legislation making it mandatory to declare one's religious beliefs (*Sinan Işık v. Turkey*, § 44). On the other hand, the need for an employee to inform his employer in advance of requirements dictated by his religion on which he wishes to rely in order to request a privilege – for example the right to be absent from work every Friday in order to attend Mosque – cannot be equated with an "obligation to reveal one's religious beliefs" (*X. v. the United Kingdom*, Commission decision of 12 March 1981).

60. The Court has found a *violation* of Article 9 of the Convention (taken alone or in conjunction with Article 14 prohibiting discrimination):

- as a result of the organisation of a swearing-in procedure in court as a precondition for exercising the legal profession, which procedure was based on the presumption that the person in question was an Orthodox Christian and wished to take the religious oath; in order to be allowed to make a solemn declaration instead of a religious oath, the applicant had had to reveal that he was not an Orthodox Christian (*Alexandridis v. Greece*, §§ 36-41);
- in connection with the same issue as in *Alexandridis*, albeit in relation to individuals participating in criminal proceedings as witnesses, complainants or suspects (*Dimitras and Others v. Greece*; *Dimitras and Others v. Greece* (no. 2); *Dimitras and Others v. Greece* (no. 3));
- owing to the absence of an alternative course in ethics which might have been taken by the applicant, a pupil who had been dispensed from courses in religion, subsequently to which all his school reports and his primary school diploma had a dash ("–") in the space reserved for "Religion/Ethics"; even if the mark entered in this space did not show whether the pupil in question had taken a course in religion or ethics, the total absence of a mark clearly showed that he had taken neither type of course, thus exposing him to a risk of stigmatisation (*Grzelak v. Poland*; cf. two cases in which the organs of the Convention had declared similar complaints inadmissible as manifestly ill-founded: *C.J., J.J. and E.J. v. Poland*, Commission decision, and *Saniewski v. Poland* (dec.));
- the addition to a birth certificate of a handwritten entry "choice of name", implying that the bearer had not been christened but that his name had been chosen by civil act; the entry was not prescribed by law but reflected a practice on the part of certain registry offices in Greece (*Stavropoulos and Others v. Greece*, § 44).

61. Conversely, the Court found *no violation* of Article 9 (or declared the complaint under this article manifestly ill-founded) in the following cases:

- the indication "–" (two dashes) in the corresponding space on the applicant's income tax card, showing that he belonged to none of the Churches or religious organisations for which the State levied a church tax. The Court found that the document in question, which was reserved for the employer and the tax authorities, was not designed for public use, thus limiting the scope of the impugned interference (*Wasmuth v. Germany*, §§ 58-59);
- a refusal by prison authorities to rectify an alleged administrative error in a prisoner's file concerning his religious affiliation, where that alleged error had had absolutely no real, practical impact on his ability to manifest whatever religion he wished – especially since the file in question was not meant for public consultation or use in day-to-day life, but had been accessible solely to the prison authorities (*Mariş v. Romania* (dec.), § 28).



## 2. Conscientious objection: the right not to act contrary to one's conscience and convictions

62. Article 9 does not explicitly mention the right to conscientious objection, whether in the military or civilian sphere. Nevertheless, the Court has ruled that the safeguards of Article 9 apply, in principle, to opposition to *military* service, when it is motivated by a serious, insuperable conflict between compulsory service in the army and an individual's conscience or his or her sincere and deeply-held religious or other convictions. The answer to the question whether and to what extent objection to service military falls within the ambit of Article 9 will vary according to the specific circumstances of each case (*Bayatyan v. Armenia* [GC], §§ 92-111 ; *Enver Aydemir v. Turkey*, § 75). Any system of compulsory military service imposes a heavy burden on citizens. It will be acceptable if it is shared in an equitable manner and if exemptions from this duty are based on solid and convincing grounds (*Bayatyan v. Armenia* [GC], § 125). It is therefore legitimate that the national authorities conduct a prior examination of a request for recognition of conscientious objector status, particularly since the Contracting States have a certain margin of appreciation in defining the circumstances under which they recognise the right to conscientious objection and introducing mechanisms for considering requests for conscientious objector status in the military sphere (*Enver Aydemir v. Turkey*, § 81). Generally speaking, if an individual requests a special exemption bestowed upon him due to his religious beliefs or convictions, it is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation of genuine belief and, if that substantiation is not forthcoming, to reach a negative conclusion (*Dyagilev v. Russia*, § 62).

63. Although there is no precise established definition of conscientious objection, the Court has seen fit to follow the opinion of the United Nations Human Rights Committee to the effect that conscientious objection is based on the right to freedom of thought, conscience and religion where it clashes with the compulsory use of force at the cost of human lives. By applying Article 9 of the Convention, the Court has limited conscientious objection to religious or other convictions comprising, in particular, a firm, permanent and sincere objection to any involvement in war or the bearing of arms (*Enver Aydemir v. Turkey*, § 81).

64. A State which has not (yet) established alternative modes of civilian service in order to reconcile the possible conflict between individual conscience and military obligations enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference. In particular, it must demonstrate that the interference corresponds to a "pressing social need" (*Bayatyan v. Armenia* [GC], § 123). In particular, an alternative system whose scope is confined to members of the clergy discharging ecclesiastical duties and students in religious schools cannot be deemed adequate for the purposes of Article 9 of the Convention (*Mushfig Mammadov and Others v. Azerbaijan*, §§ 96-97). Similarly, a mere reference to the "necessity of defending the territorial integrity of the State" does not in itself constitute grounds capable of justifying the absence of an appropriate alternative service (*Mushfig Mammadov and Others v. Azerbaijan*, § 97).

65. For example, the Court concluded that there had been a violation of Article 9 resulting from the conviction of the applicant, a Jehovah's Witness (a religious group whose beliefs include the conviction that service, even unarmed, within the military is to be opposed), for having evaded compulsory military service, whereas no alternative civilian service was provided for by law (*Bayatyan v. Armenia* [GC], § 110). The Court has subsequently found violations of Article 9 in a series of cases bearing a strong resemblance to the case of *Bayatyan*, directed against Armenia (*Bukharatyan v. Armenia*; *Tsaturyan v. Armenia*), Turkey (*Erçep v. Turkey*; *Feti Demirtaş v. Turkey*; *Buldu and Others v. Turkey*) and Azerbaijan (*Mushfig Mammadov and Others v. Azerbaijan*). In *Avanesyan v. Armenia*\*, §§ 36-37, in particular, a violation of Article 9 was found in the case of an Armenian Jehovah's Witness, who had been convicted by the courts of the "Nagorno-Karabakh Republic" ("NKR", an entity which was not recognised as a State by the international community) for refusing to perform compulsory military service. Even though, for the purposes of

the case-law of the Court, Armenia had exercised effective control over Nagorno-Karabakh, which therefore fell under its jurisdiction, the applicant had been unable to perform alternative civilian service, despite the fact that the latter was already provided for in Armenian law (*ibid.*, §§ 57-59).

66. In the case of *Feti Demirtaş v. Turkey*, the Court ruled that the fact that the applicant, who had been convicted several times, had finally been demobilised on the basis of a medical report stating that he was suffering from adjustment disorder had changed nothing and did not detract from his “victim” status; quite the contrary – it was during his military service that his psychological disorder had emerged, further exacerbating the respondent State’s responsibility (§§ 73-77 and 113-114).

67. All the aforementioned cases concerned conscientious objectors who were Jehovah’s Witnesses. However, the Court also found violations of Article 9 in two cases of pacifists who mentioned no religious beliefs. In those cases the Court concentrated on the State’s positive obligations, finding a violation as a result of the lack of an effective and accessible procedure under the Turkish legal system whereby the applicants might have ascertained whether they could claim conscientious objector status (*Savda v. Turkey*; *Tarhan v. Turkey*). Previously, in a case against Romania, the applicant had complained that he had been a victim of discrimination as a result of the national authorities’ refusal to register him as a conscientious objector, because under domestic law only objectors who put forward religious reasons could lay claim to such status, whereas he himself was quite simply a pacifist. Nevertheless, as the applicant had never been convicted or prosecuted and compulsory military service in peacetime had meanwhile been abolished in Romania, the Court considered that he could no longer claim to be a “victim” of the alleged violation (*T.N.B. v. Romania* (dec.)). In another case, the Court tacitly presumed that the request of a self-declared pacifist to be assigned to civilian service instead of compulsory military service fell within the scope of Article 9 of the Convention, but eventually found no violation of that Article (*Dyagilev v. Russia*). Generally speaking, a person does not necessarily have to adhere to an actual religion or belong to a pacifist organisation in order to be recognised as a conscientious objector (*Papavasylakis v. Greece*).

68. The Court refused to acknowledge the applicability of Article 9 in the case of a Turkish national who had been arrested and convicted for refusing to carry out his compulsory military service on the grounds that although he could not conduct military service for the secular Republic of Turkey, he might possibly have done so in a system based on the Koran and Sharia law. In other words, the applicant relied neither on a religious conviction that military service should be opposed on principle, nor on a pacifistic and anti-militaristic philosophy. Therefore, the applicant’s complaint did not concern a manifestation of a “religion or belief, in worship, teaching, practice (or) observance” within the meaning of Article 9 § 1 (*Enver Aydemir v. Turkey*, §§ 79-84).

69. Even where the State provides for the possibility of exemption from compulsory military service and introduces an alternative civilian service, that fact alone is not sufficient to ensure compliance with the right to conscientious objection as secured under Article 9 of the Convention. In the first place, the State’s positive obligations may involve the adoption of an effective and accessible procedure designed to protect that right, and in particular the introduction of a statutory framework setting up an enforceable judicial mechanism to protect individuals’ rights and, if necessary, of appropriate specific measures. There is therefore a positive obligation on the national authorities to provide those concerned with an effective and accessible procedure for establishing whether they are entitled to conscientious objector status (*Papavasylakis v. Greece*, §§ 51-52). It is quite legitimate for the national authority responsible for implementing that procedure to interview the individual in question in order to assess the seriousness of his beliefs and to thwart any attempt to abuse the possibility of an exemption on the part of individuals who are in a position to perform their military service (*Papavasylakis v. Greece*, § 54). However, the investigation conducted by that authority must meet the conditions of accessibility and effectiveness, which requires the persons responsible for investigating to be independent (*ibid.*, § 60).

70. Thus the Court found a violation of Article 9 in the case of a Greek man who stated that he was a conscientious objector despite not being an adherent of any specific religion or a member of a pacifist organisation. He had appeared before the army's Special Board to explain the reasons for his request for exemption. The Special Board normally had five members, two servicemen and three civilians, but on the day in question two of its civilian members (university professors) had been absent and not been replaced. Since there had nevertheless been a quorum, the Board, sitting with a majority of servicemen, dismissed the applicant's request. His appeal having also been dismissed by the Supreme Administrative Court, he had been heavily fined for insubordination. The Court ruled that the Greek authorities had failed in their obligation to ensure that interviews with conscientious objectors before the Special Board were conducted under conditions that guaranteed procedural efficiency and the equal representation required by domestic law (*Papavasiliakis v. Greece*, § 60).

71. Conversely, the Court found no violation of Article 9 in the case of a Russian man who claimed to be a pacifist and whose application to be assigned to civilian service instead of compulsory military service had been dismissed. The Court noted that the military commission deciding on the applicant's request had consisted of seven public officials, four of whom, including the President, had been structurally independent from the Ministry of Defence: nothing had suggested that these members had obtained any payments or incentives from the military authorities or received any instructions from the Ministry of Defence. The composition of the commission therefore provided the applicant with the requisite guarantees of independence. Furthermore, any procedural defects at the commission level could be remedied during the judicial proceedings, given the courts' wide powers to review such cases (*Dyagilev v. Russia*, §§ 65-84).

72. Secondly, even if the positive obligation of the State to put in place an accessible and effective mechanism for establishing whether an applicant is entitled to conscientious objector status has been complied with, there nevertheless remains a negative obligation to abstain from any unjustified and disproportionate interference in each particular case. An interference will take place whenever an individual's request, motivated by religious beliefs or convictions, to be drafted for alternative civilian service is dismissed by national authorities (*Dyagilev v. Russia*, §§ 60, 64 and 85). Even if the Court retains its supervisory function, it will rely on the conclusions reached by an effective domestic mechanism after examination of an individual request, except in cases of arbitrariness or manifest unreasonableness (*ibid.*, § 87).

73. For example, the Court found no violation of the negative obligation in the case of a man who claimed to have suddenly realised his adherence to pacifist philosophy while attending a seminar with a view to finding "a lawful way to avoid military service" shortly after becoming liable to be called up for it. The Court accepted the domestic authorities' conclusions according to which the applicant had failed to substantiate a serious and insurmountable conflict between the obligation to serve in the army and his convictions (*Dyagilev v. Russia*, §§ 88-94).

74. Thirdly, the conduct of the alternative service must also satisfy certain conditions; in other words, the alternative arrangements made by the State must be suited to the requirements of the individual's conscience and beliefs. Even if the Contracting States have a certain margin of appreciation regarding the manner in which their systems of alternative service are organised and implemented, they must do so, either in law or in practice, in such a way as to ensure that it is a genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character. When deciding whether alternative service is of a genuinely civilian nature, the Court has regard to several factors, including the nature of the work performed, authority, control, applicable rules and appearances (*Adyan and Others v. Armenia*, §§ 67-68).

75. Thus the Court found a violation of Article 9 in the case of four Armenian Jehovah's Witnesses convicted of having refused to perform either military or alternative civilian service because of their religious beliefs. Although recruits could opt for the latter type of service and were assigned to such civilian institutions as orphanages, retirement homes and hospitals, the system available to the

applicants at the time had not been of a genuinely civilian nature, because it had two main shortcomings. First of all, the service had not been sufficiently separated from the military system: the military had been involved in the supervision of the civilian institutions, carrying out regular spot checks, taking measures in the event of unauthorised absence, ordering transfers and determining assignments and the application of military regulations. As regards appearances, civilian servicemen had been required to wear a uniform. Secondly, the programme had been considerably longer than the period of military service (42 months as against 24), which had necessarily had a deterrent, or even punitive, effect (*Adyan and Others v. Armenia*, §§ 69-72).

76. The Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 9 in three cases in which ministers of the Jehovah's Witnesses in Austria complained that they had been denied complete exemption from military service *and* alternative civilian service, as such an exemption was reserved for ministers of "recognised religious associations", and was unavailable for such "registered" religious organisations as the Jehovah's Witnesses at the time – despite the similarity of the functions exercised by all religious ministers (*Löffelmann v. Austria*; *Gütl v. Austria*; *Lang v. Austria*). On the other hand, the Court found no violation of Article 14 in conjunction with Article 9 in the case of an evangelical preacher who had been denied complete exemption from military and civilian service. In that case the Court noted that the applicant had never applied for "recognised religious association" status; his situation was therefore not comparable to that of ministers leading worship in such associations (*Koppi v. Austria*).

77. As regards compensation for persons having suffered a violation of the right to conscientious objection in the past, the Court declared manifestly ill-founded an application lodged by a Seventh-Day Adventist who had been conscripted during the Communist era and been sentenced to imprisonment for the "insubordination" of having refused to take the oath and attend the symbolic presentation of his weapon on a Saturday. After the collapse of Communism and the establishment of the democratic regime he had not been afforded a higher pension and other advantages granted by law to the victims of political persecution under the old regime, on the basis of domestic case-law to the effect that convictions for military insubordination – on whatever grounds – were not considered as "political persecution". Under Article 14 in conjunction with Article 9, the applicant complained of the domestic courts' refusal to take account of the fact that his conviction had been motivated by his religious beliefs. The Court ruled that although the positive obligations flowing from Article 14 could force the State to eliminate the negative consequences for conscientious objectors of any convictions for military insubordination, they in no way involved valorising the said convictions in a positive manner by granting financial advantages reserved for other categories of persons. In this case the impugned case-law had had an objective and reasonable justification consonant with the State's normal margin of appreciation (*Baciu v. Romania* (dec.)).

78. As regards *schools*, the Court found no violation of Article 9 in the cases of two young Jehovah's Witnesses attending State secondary schools in Greece, who had been punished with one or two days' suspension from school for refusing to take part in a school parade commemorating the anniversary of the outbreak of war between Fascist Italy and Greece. The applicants had informed the headmasters of their respective schools that their religious beliefs forbade them joining in the commemoration of a war by taking part, in front of the civil, Church and military authorities, in a school parade that would follow an official Mass and would be held on the same day as a military parade. Having found no violation, in respect of the parents, of the right to ensure their daughters' education and teaching in conformity with their own philosophical convictions (Article 2 of Protocol No. 1), the Court reached the same conclusion as regards the right to freedom of religion in respect of the daughters themselves. It noted that they had been exempted from religious education and Orthodox Mass as requested. As regards the compulsory participation in the school parade, the Court held that neither the purpose of the parade nor the arrangements for it could have offended either girl's pacifist convictions, and that such commemorations of national events served, in their way, both pacifist objectives and the public interest (*Valsamis v. Greece*; *Efstratiou v. Greece*).

79. In the *civilian* field, an applicant's interest in not having to act contrary to his conscience may be seriously restricted by the public interest in ensuring equal treatment for all users, particularly as regards the treatment of same-sex couples (*Eweida and Others v. the United Kingdom*, § 105). The Commission also accepted that the convictions expressed in exercising the conscience clause in a professional context – for instance a lawyer's conscience clause – may, in principle, fall within the scope of Article 9. Thus, in view of its specificity and notwithstanding its professional nature, such a clause might become confused with the personal convictions of the lawyer in his capacity not as an officer of the court but as a private individual (*Mignot v. France*, Commission decision).

80. The Court found no violation of Article 9 (alone or in conjunction with Article 14 of the Convention on prohibition of discrimination) in the following cases:

- disciplinary proceedings against a Christian employee of a local authority for refusing to work on registering homosexual civil unions, and her dismissal (*Eweida and Others v. the United Kingdom*, §§ 102-106);
- disciplinary proceedings against a private company employee for refusing to provide psycho-sexual therapy for same-sex couples, and his dismissal following those proceedings (*ibid.*, §§ 107-110).

81. The organs of the Convention also refused to recognise the right to conscientious objection, and therefore to find any violation of Article 9 of the Convention, in the following cases:

- the refusal of a pacifistic Quaker to pay a certain percentage of his tax unless he could be sure it would not be allocated to financing the military sector (*C. v. the United Kingdom*, Commission decision; this approach was confirmed in *H. and B. v. the United Kingdom*, Commission decision), and the refusal of a French taxpayer who was opposed to abortion to pay a percentage of the tax used for funding abortions (*Bouessel du Bourg v. France*, Commission decision). In all these cases the Court held that the general obligation to pay tax had, in itself, no specific impact in terms of the individual conscience, because the neutrality of the obligation was illustrated by the fact that individual taxpayers could not influence the allocation of taxes or decide such allocation once the taxes had been levied;
- a disciplinary penalty imposed on a lawyer for formally refusing to conduct tasks to which he had been officially assigned in accordance with law, representing persons held in police custody, on the grounds that he was opposed in principle to the law in question. While accepting that the lawyers professional conscience clause could fall within the scope of Article 9, the Commission noted that the applicant had merely contested the legal system in question, without ever having complained about being required to appear in an actual case which had offended his conscience, which might have allowed him to rely on the said clause (*Mignot v. France*, Commission decision);
- a case in which the applicants, the joint owners of a pharmacy, had refused to sell the contraceptive pill in their pharmacy on the grounds of their religious beliefs (*Pichon and Sajous v. France* (dec.)).

82. The Court also dismissed the following applications:

- an application lodged by an unemployed person – who stated that he belonged to no particular religion – whose unemployment benefit had been temporarily suspended after he had refused a job as a receptionist in a conference and seminar centre belonging to the local protestant church. The Court noted that the job in question merely involved assisting customers, that by definition the work was unrelated to any kind of religious beliefs, and that it had not been demonstrated that the job would have infringed the applicant's freedom not to adhere to a religion (*Dautaj v. Switzerland* (dec.));
- an application lodged by a doctor employed by a public health insurance department who had been dismissed for refusing to conduct a medical examination of an apprentice



because he feared a “possible bias” which could lead to difficulties if he had to work with the apprentice in the future. The Court noted that the applicant’s attitude did not constitute an expression of a coherent view on a fundamental problem and that he had not explained the moral dilemma which he had wished to obviate. Therefore, there was no “manifestation of personal beliefs” for the purposes of Article 9 (*Blumberg v. Germany* (dec.));

- an application lodged by several Russian nationals complaining about legislation which assigned individual “taxpayer numbers” to all taxpayers and which they considered as a forerunner of the Sign of the Antichrist. The Court noted that this measure applied neutrally and generally in the public sphere, and that the applicants had not been required to apply for, or to make use of, the taxpayers’ numbers, as the law explicitly authorised most taxpayers not to use it in official documents. Moreover, the Court reiterated that the contents of official documents or databases could not be determined by the wishes of the individuals listed therein. There had consequently been no interference in the rights secured under Article 9 (*Skugar and Others v. Russia* (dec.)).

## B. Positive aspect

### 1. General principles

83. While freedom of religion is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to “manifest [one’s] religion” alone and in private or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists a number of forms which manifestation of one’s religion or belief may take, namely worship, teaching, practice and observance (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 114).

84. Save in very exceptional cases, the right to freedom of religion as secured by the Convention is incompatible with any power on the State’s part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (*Hassan and Tchaouch v. Bulgaria* [GC], § 76; *Leyla Şahin v. Turkey* [GC], § 107). Indeed, religious and philosophical beliefs concern individuals’ attitudes towards religion, an area in which even subjective perceptions may be important in view of the fact that religions form a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature (*İzzettin Doğan and Others v. Turkey* [GC], § 107). Accordingly, the State has a narrow margin of appreciation and must advance serious and compelling reasons for an interference with the choices that people may make in pursuance of the religious standard of behaviour within the sphere of their personal autonomy. An interference may be justified in the light of paragraph 2 of Article 9 if their choices are incompatible with the key principles underlying the Convention, such as, for example, polygamous or underage marriage or a flagrant breach of gender equality, or if they are imposed on the believers by force or coercion (*Jehovah’s Witnesses of Moscow and Others v. Russia*).

85. Article 9 does not protect every act motivated or inspired by a religion or belief and does not always secure the right to behave in the public sphere in a manner dictated or inspired by one’s religion or beliefs (*Kalaç v. Turkey*). Similarly, as a general rule, it does not confer a right to refuse, on the basis of religious convictions, to abide by legislation the operation of which is provided for by the Convention and which applies neutrally and generally (*Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands* (dec.)). If an act which is inspired, motivated or influenced by a religion or set of beliefs is to count as a “manifestation” of the latter within the meaning of Article 9, it must be intimately linked to the religion or beliefs in question. One example might be an act of worship or devotion which forms part of the practice of a religion or beliefs in a generally recognised form. However, the “manifestation” of religion or belief is not limited to such acts; 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, applicants claiming that a given act falls within their freedom to manifest their religion or beliefs are not required to establish that they acted in fulfilment of a duty mandated by the religion in question (*S.A.S. v. France* [GC], § 55). For example, the Court, on the basis of the official position of the Islamic Community in the respondent State, acknowledged that a Muslim man's wish to wear a skullcap, which did not represent a strong religious duty but had such strong traditional roots that it was considered by many people to constitute a religious duty, was protected by Article 9 (*Hamidović v. Bosnia and Herzegovina*, § 30).

86. Sometimes, in exercising their freedom to manifest their religion, individuals may need to take account of their specific professional or contractual situation (*X. v. the United Kingdom*, Commission decision of 12 March 1981; *Kalaç v. Turkey*, § 27). For example, the Court declared manifestly ill-founded a complaint submitted by an applicant whose authorisation to operate a private security agency had been cancelled on the ground that he had become a member of the Aumist Community of Mandarom and therefore no longer satisfied the "honourability" criterion required under Swiss law for the granting of such authorisation. The domestic courts had found that the leader of that Community was a dangerous person, that his teaching concerned the imminence of the Apocalypse, that he was liable to induce his followers to commit suicide or violence, and lastly, that to leave the possibilities inherent in operating a security agency in the hands of an adherent of such an organisation could well pose a risk to public order and security. The Court, in substance, supported the findings of the domestic courts, and concluded that the impugned interference was in conformity with Article 9 § 2 of the Convention (*C.R. v. Switzerland* (dec.)).

87. The ensuing overview of the Court's case-law covers the various manifestations of freedom of religion, ranging from the most personal and intimate forms (relating health issues) to the most communal and public expressions (concerning freedom of collective worship and the right to open places of worship).

## 2. Freedom of religion and physical and mental health issues

88. The Court has ruled that the refusal of *blood transfusions* freely consented by Jehovah's Witnesses is, in principle, a matter for the individual's personal autonomy and as such is protected by Articles 8 and 9 of the Convention. In this context, the Court firstly noted that refusing a transfusion could not be equated with suicide because the Jehovah's Witnesses did not refuse medical treatment in general; transfusion was the only medical procedure which they rejected on religious grounds. Even if the patient refuses a transfusion which, according to considered medical opinion, is absolutely essential in order to save his life or to prevent irreparable damage to his health, the Court has held that the freedom to conduct one's life in a manner of one's own choosing includes freedom to pursue activities perceived to be of a physically harmful or dangerous nature for the individual concerned. In the sphere of medical assistance, even where refusal to accept a particular treatment might have a fatal outcome, the imposition of medical treatment without the consent of a mentally competent adult patient would interfere with his or her right to physical integrity and impinge on the rights protected under Article 8. However, if such personal freedom is to be genuine patients must be able to make choices in line with their own opinions and values – even if those choices seem irrational, ill-advised or rash to others. Having considered the relevant domestic legislation, the Court found that it provided sufficient protection for both the freedom of choice of adult patients and the objective interests of minors (by empowering the courts to overrule the parents' opposition to medical treatment likely to save the child's life). Consequently, the prohibition of blood transfusions in the teaching of the Jehovah's Witnesses cannot serve as justification for dissolving the organisation and prohibiting its activities (*Jehovah's Witnesses of Moscow and Others v. Russia*, §§ 131-144).

89. As regards the freedom of religion of patients confined in psychiatric hospitals, the position of inferiority and powerlessness which is typical of such patients calls for increased vigilance in reviewing whether the Convention, and in particular Article 9 thereof, has been complied with

(*Mockutė v. Lithuania*, § 122). It is true that psychiatric treatment may require the psychiatrist to discuss various matters, including religion, with a patient. However, it is unacceptable for a psychiatrist to pry into the patients' beliefs in order to "correct" them when there is no clear and imminent risk that such beliefs will manifest in actions dangerous to the patient or others (*Mockutė v. Lithuania*, § 129). The Court thus found a violation of Article 9 in the case of a woman practising meditation in an Osho religious movement who was forcibly admitted to a psychiatric hospital, diagnosed with acute psychosis and kept in hospital for 52 days, during which time the medical staff attempted to "correct" her beliefs by disparaging them and encouraging her to adopt a critical attitude towards meditation and the Osho movement. In view of the fact that the applicant's hospitalisation beyond the second day had been unlawful and unjustified under domestic law, and that the applicant had been particularly dependant, vulnerable and powerless *vis-à-vis* the psychiatrists, the Court found that there had been an interference in her freedom of religion and that that interference had not been "prescribed by law" (*Mockutė v. Lithuania*, §§ 107-131).

90. The Court found a violation of Article 9 (as well as of Article 8 of the Convention concerning respect for private and family life) in a case in which hospital doctors had carried out an autopsy on and removed organs from a premature baby who had died of a rare illness, despite the mother's objections and her specific wish for a ritual funeral in accordance with the Islamic requirement that the corpse had to remain intact. The Court took the view that the authorities had failed properly to balance the competing rights and interests, that is to say the requirements of public health and the mother's wish to bury her child in accordance with the precepts of her religion (*Polat v. Austria\**, §§ 89-91).

### 3. Observance of dietary laws

91. The observance of dietary laws dictated by a religion or a philosophical system is a "practice" which is protected by Article 9 § 1 of the Convention (*Cha'are Shalom Ve Tsedek v. France* [GC], §§ 73-74; *Jakóbski v. Poland*). In two cases the Court found a violation of Article 9 owing to a prison administration's refusal to provide the applicants, prisoners of Buddhist faith, with meat-free meals, even though such an arrangement would not have been an excessive burden on the prisons in question (*ibid.*; *Vartic v. Romania (no. 2)*). In the latter case, in particular, the applicant had only been able to obtain a diet for sick prisoners which contained meat. The Court noted that the applicant had very little scope for receiving food which complied with his religion, especially after the Minister of Justice prohibited food parcels being received by post (*ibid.*, §§ 47-50).

92. Conversely, the Commission declared inadmissible an application in which the applicant, an Orthodox Jew serving a prison sentence, complained that he had not been regularly provided with kosher food. The Commission noted that the applicant had been offered a vegetarian kosher diet, that the Chief Rabbi had been consulted on the matter and that he had approved the measures taken by the authorities in order to respect the applicant's religious rights (*X. v. the United Kingdom*, Commission decision of 5 March 1976).

93. The Court also found no violation of Article 9, taken alone or in combination with Article 14 of the Convention (prohibition of discrimination) in a case in which the applicant association, a French ultra-orthodox Jewish liturgical association whose members had demanded the right to eat "*glatt*" meat from animals slaughtered in accordance with stricter prescriptions than the standard kashrut, complained of the national authorities' refusal to grant it the requisite approval to authorise its own slaughterers to perform the requisite ritual slaughter, even though it had granted such approval to the Jewish Consistorial Association of Paris, to which the great majority of Jews in France belong. Noting that the applicant association could easily obtain supplies of "*glatt*" meat in Belgium and that a number of butcher's shops operating under the control of the Consistorial Association made duly certified "*glatt*" meat available to Jews, the Court ruled that the denial of approval complained of did not constitute an interference with the applicant association's right to freedom to manifest its religion. It specified that since the applicant association and its members were able to procure the



meat in question, the right to freedom of religion guaranteed by Article 9 of the Convention could not extend to the right to participate personally in the performance of ritual slaughter and the subsequent certification process (*Cha'are Shalom Ve Tsedek v. France* [GC], § 82).

#### 4. Wearing of religious clothing and symbols

94. A healthy democratic society needs to tolerate and sustain pluralism and diversity in the religious sphere. Moreover, an individual who has made religion a central tenet of his or her life must, in principle, be able to communicate that belief to others, *inter alia* by wearing religious symbols and items of clothing (*Eweida and Others v. the United Kingdom*, § 94). Wearing such a symbol or item of clothing as motivated by the person's faith and his or her desire to bear witness to that faith constitutes a manifestation of his or her religious belief, in the form of worship, practice and observance; it is therefore an action protected by Article 9 § 1 (*ibid.*, § 89). For example, the Court explicitly accepted that a Muslim man's wish to wear a skullcap, which did not represent a strong religious duty but had such strong traditional roots that it was considered by many people to constitute a religious duty, was protected by Article 9 (*Hamidović v. Bosnia and Herzegovina*, § 30).

95. However, the right to wear religious clothing and symbols is not absolute and must be balanced with the legitimate interests of other natural and legal persons. The Court's current case-law in this field covers four different areas: a) the public space; b) schools and universities; c) the civil service and the public services; and d) the workplace.

96. Firstly, as regards the first hypothesis of wearing religious clothing and symbols in the *public space*, the Court found a violation of Article 9 arising from the criminal conviction of applicants who were members of a religious group called "*Aczimendi tarikati*", on the basis of Turkish legislation banning the wearing of certain types of religious costumes in public places open to all, outside of religious ceremonies. In this case the costume in question comprised a black turban, black sirwal trousers and a black tunic, accompanied by a baton. Having regard to the circumstances of the case and the wording of the decisions given by the domestic courts, and taking into account the importance of the principle of secularism to the democratic system in Turkey, the Court accepted that inasmuch as the interference in question had been geared to ensuring compliance with secular and democratic principles, it had pursued several of the legitimate aims listed in Article 9 § 2, i.e. the protection of public security, public order and the rights and freedoms of others. The Court did, however, consider that the necessity of the measure *vis-à-vis* such aims had not been established. It noted that the prohibition had been directed not at public servants who are required to show discretion in exercising their duties, but at ordinary citizens, and that it had targeted clothing worn not in specific public establishments but throughout the public space. Furthermore, it did not transpire from the case file that the manner in which the applicants – who had gathered outside a mosque wearing the costume in question with the sole aim of taking part in a religious ceremony – had manifested their beliefs by means of a specific type of clothing had constituted or been liable to constitute a threat to public order or a means of exerting pressure on others. Lastly, in reply to the Turkish Government's argument that the applicants might have been engaging in proselytism, the Court found no evidence in the case-file to show that they had attempted to exert wrongful pressure on passers-by in the streets and public areas in order to promote their religious beliefs (*Ahmet Arslan and Others v. Turkey*).

97. Conversely, the Court found no violation of Article 9 in a case against France concerning the enactment of a law penalising the wearing in the public space of an item of clothing intended to conceal the face (therefore including the burqa and the niqab). Such an act was punishable with a fine and/or a compulsory course in citizenship. The Court considered that this case differed significantly from the case of *Ahmet Arslan and Others v. Turkey* because the full-face Islamic veil had the particularity of entirely concealing the face, with the possible exception of the eyes. By the same token, the prohibition in the French case had not been explicitly based on the religious connotation of the item of clothing in question. The Court acknowledged the legitimacy of the

respondent Government's argument that the face played an important role in human interaction and that individuals who were present in places open to all might not wish to see practices or attitudes developing there which fundamentally called into question the possibility of open interpersonal relationships, which, by virtue of an established consensus, formed an indispensable element of community life within the society in question. The Court therefore accepted that the barrier raised against others by a veil concealing the face was perceived by the respondent State as breaching the right of others to live in a space of socialisation which made living together easier; in other words, the State might find it essential to give particular weight in this connection to the interaction between individuals and could consider this to be adversely affected by the fact that some concealed their faces in public places. While voicing some doubt as to the need to tackle the challenge in question by means of a blanket ban (given the small number of women involved) and expressing its concerns about the risk of a negative impact on the social situation of the women in question, who might find themselves isolated, the Court found that the respondent State had not overstepped its margin of appreciation, particularly in view of the leniency of the penalties incurred (*S.A.S. v. France* [GC]). For the same reasons the Court reached the same conclusion in two cases against Belgium concerning a local by-law and national law very similar to French legislation, even though the penalties imposed by Belgian law were considerably heavier (*Dakir v. Belgium*; *Belcacemi and Oussar v. Belgium*).

98. The organs of the Convention have always refused to acknowledge the merits of complaints concerning compulsory temporary removal for *security reasons* of an item of clothing associated with a religion. For example, they have dismissed applications concerning:

- the fining of a practising Sikh for breaches of the obligation on motorcyclists to wear a crash helmet; the applicant submitted that his religion required him to wear a turban at all times, which made it impossible to wear a helmet (*X. v. the United Kingdom*, Commission decision of 12 July 1978);
- the obligation on a practising Sikh to remove his turban when passing the walk-through scanner before entering the airport departure lounge (*Phull v. France* (dec.));
- an obligation imposed on an applicant, who had gone to the Consulate-General of France in Morocco in order to request a visa, to remove her veil for an identity check; having refused to do so, she was prevented from entering the Consulate premises and was unable to obtain her visa. The Court rejected the applicant's argument that she would have been prepared to remove her veil, but only in the presence of a woman; it considered that the fact that the French consular authorities did not assign a female officer to carry out the identification of the applicant does not exceed the State's margin of appreciation in these matters (*El Morsli v. France* (dec.));
- the obligation to appear bare-headed in identity photographs for official documents and, more specifically, the obligation imposed on a Muslim student to provide an identity photograph showing her bare-headed in order to obtain her university diploma (*Karaduman v. Turkey*, Commission decision; *Araç v. Turkey* (dec.));
- the obligation to be bare-headed in identity photographs for official documents and, more specifically, the authorities' refusal to accept photographs showing the applicant, a Sikh, wearing a turban (*Mann Singh v. France* (dec.)).

99. As regards the second hypothesis of wearing religious symbols and clothing in *State educational institutions*, the Court has always emphasised that States enjoy a very extensive margin of appreciation in this field. 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 (*Leyla Şahin v. Turkey* [GC], § 109). The cases which have been assessed by the Court from this point of view break down into two different categories based on whether the applicant demanding the right to wear religious clothing was a teacher or a student (or pupil).

100. As regards *teachers*, the Court has balanced the teacher's right to manifest his or her religion against respect for the neutrality of State education and the protection of the students' legitimate interests by ensuring inter-faith harmony. Although it is legitimate for a State to impose on public servants, on account of their status, a duty to refrain from any ostentation in the expression of their religious beliefs in public, public servants are individuals and, as such, qualify for the protection of Article 9 of the Convention. It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of religion and the legitimate interest of a democratic State in ensuring that its public service properly furthers the purposes enumerated in Article 9 § 2 (*Kurtulmuş v. Turkey* (dec.)). In that regard, account should be taken of the very nature of the profession of State school teachers, who are both participants in the exercise of educational authority and representatives of the State in the eyes of their pupils, and of the possible proselytising effect which wearing the clothing or symbols in question might have on them. Moreover, the pupils' age is a further important factor to be taken into consideration, since younger children wonder about many things and are also more easily influenced than older pupils (*Dahlab v. Switzerland* (dec.)).

101. In line with this logic, the Court acknowledges that the State has a wide margin of appreciation, and has found manifestly ill-founded applications concerning:

- a prohibition on a State primary school teacher responsible for a class of small children (aged between four and eight) wearing an Islamic headscarf in the performance of her teaching duties. The Court attached particular importance to the fact that wearing the Islamic headscarf, a "powerful external symbol", was difficult to reconcile with the message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers in a democratic society must convey to their pupils. Furthermore, the Court rejected the applicant's allegation that the impugned measure constituted discrimination on the ground of sex (Article 14 of the Convention), as it could also be applied to a man who, in similar circumstances, wore clothing that clearly identified him as a member of a different faith (*Dahlab v. Switzerland* (dec.));
- a disciplinary sanction imposed on an applicant, an associate professor at a State university in Turkey, for wearing the Islamic headscarf in the performance of her teaching duties in breach of the rules on dress for public servants. The Court observed that a democratic State was entitled to require its public servants to be loyal to the constitutional principles on which it is founded; the principle of secularism is one of the fundamental principles of the Turkish State; therefore, the applicant, a person in authority at the university and a representative of the State who had assumed the status of a public servant of her own free will, could have been expected to comply with the rules requiring her not to express her religious beliefs in public in an ostentatious manner. The Court also dismissed the applicant's allegation that the impugned measure amounted to discrimination on the grounds of both sex and religious affiliation (Article 14 of the Convention), as male members of staff were also subject to analogous rules requiring them not to express their religious beliefs in an ostentatious manner (*Kurtulmuş v. Turkey* (dec.); see also, for a similar case concerning the suspension of a female teacher from an "İmam-Hatip" secondary school, *Karaduman v. Turkey* (dec.)).

102. As regards *pupils and students*, the Court found no violation of Article 9 or manifest ill-foundedness *vis-à-vis* the complaints raised in the following cases:

- a prohibition on a medical student in a Turkish State university wearing the Islamic headscarf in class. In view of the specific history of Turkey and its particular constitutional system, the Court recognised the legitimacy of the efforts expended by the national authorities to maintain the principle of secularism, one of the fundamental principles of the Turkish State as interpreted by the Turkish Constitutional Court. The Court considered this notion of secularism to be consistent with the values underpinning the Convention and compatible with the rule of law and respect for human rights and democracy. In finding no violation of Article 9, the Court drew on the following considerations: the Turkish constitutional system emphasised gender equality, one of the fundamental principles underpinning the Convention and one of the goals pursued by the member States of the Council of Europe; the issue of the Islamic headscarf could not be assessed in the context of Turkey without considering the potential impact of this symbol, presented or perceived as a mandatory religious duty, on those who did not wear it; according to the Turkish courts wearing the headscarf had taken on a political meaning in the country; Turkey had extremist movements endeavouring to impose on society as a whole their religious symbols and conception of a society founded on religious precepts. Against such a background, the impugned regulations constituted a measure geared to attaining the aforementioned legitimate aims and thereby preserving pluralism in the university (*Leyla Şahin v. Turkey* [GC]);
- a prohibition on pupils at “*İmam-Hatip*” secondary schools (Turkish State-funded religious secondary schools) wearing the Islamic headscarf outside of Koran classes and a ban on class attendance by pupils wearing the headscarf. The Court noted that the relevant Turkish regulations required all secondary school pupils to wear a uniform and to attend school bare-headed; in the “*İmam-Hatip*” schools there was one exception, to the effect that girls could cover their heads during Koran lessons. Consequently, the impugned regulations comprised provisions of a general nature applicable to all pupils regardless of their religious beliefs; the provisions pursued the legitimate aim of preserving the neutrality of secondary education for teenagers liable to be exposed to a risk of pressure (*Köse and Others v. Turkey* (dec.));
- the refusal by French State secondary schools to admit pupils wearing headscarves to physical education and sports classes and their subsequent exclusion from school for non-compliance with compulsory school attendance. While acknowledging the compatibility of the French secular model with the values underpinning the Convention, the Court took account of domestic case-law from which it transpired that the wearing of religious signs was not inherently incompatible with the principle of secularism in schools, but became so according to the conditions in which they were worn and the possible consequences of wearing such a sign. The Court acknowledged that it was not unreasonable to consider that wearing a veil such as the Islamic headscarf was incompatible on health and safety grounds with practising a sport. It noted in particular that the disciplinary proceedings against the applicants had fully satisfied the obligation to balance all the interests at stake. The respondent State had therefore not overstepped its margin of appreciation (*Dogru v. France*; *Kervanci v. France*);
- a prohibition on pupils at State primary and secondary schools in France wearing “signs or clothing ostentatiously manifesting their religious affiliation”, which prohibition was general and not confined solely to physical education and sports classes, and the subsequent exclusion of pupils for wearing an Islamic headscarf or a Sikh turban or “*keski*” (“mini-turban”) on the school premises. The Court considered that the aim of protecting the constitutional principle of secularism in conformity with the values underpinning the Convention was sufficient to justify the impugned measure. Moreover, the Court held that the head teacher’s decision to refuse to authorise Muslim pupils to wear their headscarves and then remove them on entering the classroom, or to replace them with a cap or a

bandana devoid of any religious connotations, or to authorise Sikh pupils to replace their turbans with *keskis*, was not contrary to Article 9 of the Convention because it fell well within the State's margin of appreciation (*Gamaleddyn v. France* (dec.); *Aktas v. France* (dec.); *Ranjit Singh v. France* (dec.); *Jasvir Singh v. France* (dec.)).

103. The third hypothesis concerns the wearing of religious symbols and clothing in public establishments other than schools (ministries, courts, local authorities, public hospitals, etc.). Once again the cases considered by the Court can be broken down into two categories according to whether they involved officials or users of public services.

104. First of all, as regards the *users* of public services, the term “user” should be understood here in its broadest sense, that is to say any individual having dealings with the public services in a private capacity (either voluntarily or through necessity or compulsion). Unlike State officials, users are not State representatives engaged in public service and are therefore not bound by a duty of discretion in the public expression of their religious beliefs (*Ebrahimian v. France*, § 64; *Lachiri v. Belgium*, § 44). The general rule is therefore that the user is free to express his religious beliefs inside a public building or in his dealings with the public authorities.

105. Nevertheless, that freedom is not absolute. For example, while a *court* can form part of the “public space”, unlike a workplace, nonetheless it cannot be considered as a public place in the same way as a street or road or a public square. A court is a “public” establishment in which respect for neutrality *vis-à-vis* beliefs may take precedence over free exercise of the right to manifest one's religion (*Lachiri v. Belgium*, § 45). Therefore, the Court has accepted – albeit in a general and theoretical manner – that in some cases a court can order a witness to remove a religious symbol in the courtroom (*Hamidović v. Bosnia and Herzegovina*, § 41). However, it found a violation of Article 9 of the Convention in the case of a Bosnian man who was a member of a group advocating the Wahhabi/Salafi version of Islam and who was fined for refusing to remove his skullcap when testifying in a terrorist case. The Court considered that the respondent State had overstepped the wide margin of appreciation afforded to it, for the following reasons: the applicant had been an individual and not a public official; he had been required to testify on pain of sanction; his attitude had been clearly inspired by his sincere religious belief that he should wear his skullcap at all times; he had had no secret intention of disrupting or making a mockery of the trial; and lastly, unlike the defendants in the proceedings, who had also been Salafists, the applicant had appeared in court and stood up when so requested, making it clear that he respected the State's laws and courts (*Hamidović v. Bosnia and Herzegovina*). Similarly, the Court found a violation of Article 9 in the case of a Muslim woman, a civil party to proceedings, who been expelled from a courtroom for refusing to remove her headscarf. As in the previous case, the Court ruled that the applicant had in no way been disrespectful or threatened the proper conduct of the hearing (*Lachiri v. Belgium*).

106. The freedom of the users of public services to manifest their religion may also, in principle, be restricted in the framework of public hospitals. Even if patients and other users are free to express their religious beliefs, they may also be requested to assist in implementing the principle of secularism by refraining from any form of proselytism and respecting the organisation of the hospital service and, in particular, the health and safety regulations. In other words, the regulations of the State in question may place greater emphasis on the rights of others, equal treatment for patients and the proper functioning of the service than on the manifestation of religious beliefs (*Ebrahimian v. France*, § 71).

107. The situation of *officials* (civil servants or contractual employees) in the public services is completely different. States may rely on the principles of State secularism and neutrality to justify restrictions on the wearing of religious symbols by civil servants at the workplace. The Court has accepted as a “legitimate aim” the State's wish to guarantee strict religious neutrality in order to protect the rights and interests of public services users, especially where the latter are in a vulnerable situation. The purpose is to ensure respect for all of the religious beliefs and spiritual



orientations held by the patients who were using the public service and were recipients of the requirement of neutrality imposed on officials; the State thus ensures that these users enjoyed equal treatment, without distinction on the basis of religion. Accordingly, the ban on the applicant manifesting her religious beliefs while carrying out her duties pursued the aim of protecting the “rights and freedoms of others” within the meaning of Article 9 § 2 of the Convention (*Ebrahimian v. France*, § 53). In particular, where the State’s constitutional system makes its relations with the different religious denominations subject to the secularism-neutrality principle, the fact that the domestic courts attach greater weight to this principle and to the State’s interests than to the official’s interest in not limiting the expression of his or her religious beliefs does not give rise to an issue under the Convention (*ibid.*, § 67).

108. These considerations are particularly relevant in the context of a public hospital, especially where the staff in question are in contact with patients. It is legitimate to require that they refrain from manifesting their religious beliefs when carrying out their duties, in order to guarantee equality of treatment for the patients. From this perspective, the neutrality of the public hospital service may be regarded as linked to the attitude of its staff, and requires that patients cannot harbour any doubts as to the impartiality of those treating them (*Ebrahimian v. France*, § 64).

109. Accordingly, the Court found no violation of Article 9 in a case of non-renewal of contract for a Muslim woman employed as a social assistant in the psychiatric department of a French public hospital following her refusal, after receiving a warning, to remove her Islamic headscarf in the workplace. The Court observed that the impugned measure was underpinned by the need to give concrete expression to the applicant’s duty of neutrality within the hospital in order to ensure respect for the religious beliefs of the patients with whom she was in contact and reassure them that as users of a public service they were treated on an equal footing by the State, whatever their own religious beliefs. In this connection, the Court emphasised that it was not its role to assess the French model as regards the secularism of the public services as such, and that the inability to adapt the impugned obligation of neutrality to the actual duties carried out by the applicant was not in itself problematic. It found that the impugned interference had been proportionate, noting, first of all, that the hospital authorities had carefully examined the applicant’s refusal to comply with the order to remove her headscarf and had assessed their response to the continued objections from the applicant to the necessity of complying with the neutrality principle. Secondly, it observed that the applicant had had an opportunity to contest the sanction before the domestic courts and to avail herself effectively of her right to freedom of religion (*Ebrahimian v. France*).

110. We shall now examine the fourth and last hypothesis – *the workplace*. The Court ruled that hospitals have a wide margin of discretion in laying down their rules on clothing geared to protecting the health and safety of their patients and medical staff (*Eweida and Others v. the United Kingdom*, § 99; *Ebrahimian v. France*). In particular, even though the second applicant in the case of *Eweida* had been employed by a public hospital, the Court’s reasoning would appear to be applicable to any hospital, whatever its legal status. Indeed, the Court found no violation of Article 9 in a case where a nurse working in a geriatric ward was transferred for refusing to remove the cross she wore on a chain round her neck, to wear it as a brooch or tucked under a high-necked top. In the domestic court the applicants’ managers had explained that there was a risk that a disturbed patient might seize and pull the chain, thereby injuring herself or the applicant, or that the cross might swing forward and could, for example, come into contact with an open wound (*Eweida and Others v. the United Kingdom*, §§ 98-100).

111. Outside the hospital sphere, a commercial company can legitimately impose a dress code on its employees in order to project a specific commercial image; implementing this code can sometimes lead to restrictions on the wearing of religious symbols (*Eweida and Others v. the United Kingdom*, § 94). Nevertheless, these interests, however legitimate, are not absolute and must always be weighed up against the individual’s right to manifest his or her religion. Thus, the Court found a violation of Article 9 in a case where a private company had suspended an employee for refusing to

conceal the Christian cross which she wore, while certain symbols of other religions (turban or hijab) were authorised (*Eweida and Others v. the United Kingdom*, §§ 94-95).

## 5. Religious freedom, family and education of children

112. Article 9 does not purport to regulate marriage in any religious sense and it depends on each particular religion to decide on the modalities of religious marriage. In particular, it is up to each religion to decide whether and to what extent they permit same-sex unions (*Parry v. the United Kingdom* (dec.)). For instance, the Commission refused to extend the protection of Article 9 to a man sentenced to prison for having had sexual intercourse with a girl under the age of sixteen (the legal age of consent) although he was married to her under Islamic law; the Commission also concluded that there had been no appearance of a violation of Article 12 of the Convention (the right to marriage) (*Khan v. the United Kingdom*, Commission decision). The Commission also dismissed an application from a man who refused to enter into marriage with his partner in accordance with the procedure prescribed by civil law, while demanding that the State recognise their union, which he claimed had been made official by the reading out of a passage from the Old Testament before their first sexual intercourse, as a legally valid marriage (*X. v. Germany*, Commission decision of 18 December 1974).

113. Article 9 does not secure the right to *divorce* (*Johnston and Others v. Ireland*, § 63). Similarly, the Commission declared inadmissible a complaint under Article 9 submitted by a practising Jew who had been sentenced by a civil court to pay his ex-wife damages for refusing to hand over the *get* (letter of repudiation) after the civil divorce, thus allowing her to remarry under a religious ceremony. In this case the applicant explained that he had hoped in this way to retain a possibility of remarrying her because he belonged to the *Cohen* group and the law of Moses prohibited him from marrying a divorced woman, even his own ex-wife. The Commission noted that the refusal to hand over the *get* was not a “manifestation of religion” within the meaning of Article 9, especially since the applicant, who had been prosecuted by the Rabbinical Tribunal for that refusal, was apparently opposed to the religious precepts which he invoked (*D. v. France*, Commission decision);

114. It is a known fact that a religious way of life requires of its followers both abstinence by religious rules and self-dedication to religious work that can take up a significant portion of the believer’s time and sometimes assume such extreme forms as *monasticism*, which is common to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism. In so far as the adoption of such a way of life is the result of a free and independent decision by an adult, it is fully covered by the safeguards of Article 9 of the Convention, even if it may lead to conflict with family members who disapprove of that choice (*Jehovah’s Witnesses of Moscow and Others v. Russia*, § 111).

115. Under Article 2 of Protocol No. 1, the Commission decided that the right of parents to ensure the education of their children in conformity with their own religious and philosophical convictions was one of the attributes of parental authority, so that it could not be exercised by the parent from whom that custody has been withdrawn by judicial decision (*X. v. Sweden*, Commission decision of 12 December 1977).

116. In pursuance of these principles the Commission declared inadmissible:

- an application from a Polish national living in Germany whose ex-wife was living in Sweden with their under-age son. In addition to the refusal by the Swedish courts to grant him the right to visit his child, the applicant complained that the child was being raised in the Lutheran religion contrary to the teachings of the Roman Catholic Church in which he had been baptised; his ex-wife had not honoured the solemn undertaking which she made on their marriage to bring the child up in the Roman Catholic religion, as required by the canon law of the Roman Catholic Church. The Commission dismissed this complaint as incompatible with the Convention *ratione personae*, as the impugned acts were

attributable only to the applicant's ex-wife, who had sole custody of the child and had the right and duty to ensure his education, and not to the respondent State (*X. v. Sweden*, Commission decision of 20 December 1957; see also the applications lodged by the same applicant (*X. v. Sweden*, Commission decision of 30 June 1959, and *X. v. Sweden*, Commission decision of 10 April 1961) rejected as being substantially the same complaints as in the first case);

- an application from a political refugee from Soviet Central Asia who complained that his niece and nephew were estranged from their Muslim faith by being brought up in a Roman Catholic institution. Leaving aside the question whether the applicant could act on the children's behalf or claim to be an indirect "victim" of the alleged violation, the Commission noted the absence of any infringement of freedom of religion, especially since at the time of the court decision the niece and nephew had been aged twenty and twenty-one respectively (*X. v. Germany*, Commission decision of 19 July 1968);
- a complaint submitted by Jewish parents concerning a decision by the Swedish social welfare authorities to place their under-age daughters in a protestant foster family rather than a Jewish one, which they claimed violated their right to educate their children in conformity with their own religious convictions. Under Article 9 of the Convention taken in conjunction with Article 2 of Protocol No. 1, the Commission noted that in fact the authorities had expended considerable efforts to actively seek out a Jewish foster family with the assistance of the local rabbi, while keeping the parents informed of their moves and inviting them to express their opinion; however, the authorities had been unable to find a Jewish foster family in the region (*Tennenbaum v. Sweden*, Commission decision);
- an application lodged by a divorced Muslim man who had been sentenced to prison for refusing to pay maintenance for his under-age daughter on the ground that she had changed religion, as her mother had had her baptised in the Roman Catholic Church. According to the applicant, a child who had left the Muslim faith (even under its mother's influence) had to be considered "non-existent"; consequently, to require its Muslim father to pay maintenance would be contrary to freedom of religion. The Commission found that there had been no interference in the applicant's freedom of religion, as the obligation to pay maintenance for a child, custody of whom had been granted to the other parent, was generally applicable and had no direct implications *per se* for the sphere of religion or conscience (*Karakuzey v. Germany*, Commission decision).

117. As regards the Court,

- it declared inadmissible an application under Article 8 (right to respect for private and family life) and several other Convention articles lodged by a group of parents whose adult children had entered the monastic order of the Macedonian Orthodox Church. The applicants complained that by founding a monastic order and admitting their children the Church had infringed their rights, including those to remain in contact with their children, to be helped by them in old age or illness, and to have grandchildren; the State should therefore have acted against the Church to protect those rights. The Court noted that the children's choice of way of life had been free, that contact, respect and mutual affection between parents and their grown-up children were matters strictly for the private sphere and could give rise to no kind of positive obligation on the part of the State, and lastly, that the Convention did not guarantee the right to become a grandparent (*Šijakova and Others v. the former Yugoslav Republic of Macedonia* (dec.));
- it declared inadmissible as manifestly ill-founded a complaint from a mother, who was a member of the Raëlian Movement and was separated from her partner but exercised joint parental authority, concerning a court order prohibiting her from bringing her children into contact with Raëlians (apart from herself and her new partner) and taking them to Raëlian meetings. The Court considered that such interference, which was prescribed by law and



pursued a legitimate aim (protection of the rights of the children and their father), was also “necessary in a democratic society”. The applicant was able to continue to practise her religion personally and without restriction, and could even do so in her children’s presence provided that they were not brought into contact with other members of the Raëlian Movement. The Court also emphasised the priority aim of taking account of the best interests of children, which involved reconciling the educational choices of each parent and attempting to strike a satisfactory balance between the parents’ individual conceptions, precluding any value judgments and, where necessary, laying down minimum rules on personal religious practices. On very similar grounds the Court found no appearance of discrimination as prohibited by Article 14 (*F.L. v. France* (dec.));

- finding a violation of Article 9, the Court declared unconvincing the argument advanced by the Russian courts in order to dissolve the local branch of the Jehovah’s Witnesses and to prohibit its activities, contending that that religious community exerted “psychological pressure” in order to separate adherents from their families and to destroy the latter. The Court held, first of all, that the Jehovah’s Witnesses’ decision to devote themselves fully to their religious life had been taken freely, without coercion and in a very similar manner to the major “traditional” religions worldwide, and secondly, that the statistical data provided were not credible because they concerned only six cases of disputes in the families of Jehovah’s Witnesses, whereas the proper approach could have been to compare the frequency of family break-ups among non-believers, among adherents of the majority religion in the country and among the Jehovah’s Witnesses (*Jehovah’s Witnesses of Moscow and Others v. Russia*, §§ 109-104);
- it declared inadmissible for incompatibility *ratione materiae* with the Convention a complaint from a father who objected to his under-age daughter (custody of whom had been entrusted to the mother) being baptised and taking Roman Catholic catechism classes and who complained of the Spanish courts’ refusal to order that any decision concerning his daughter’s religious education should be postponed until she came of age, and that in the meantime he should take sole responsibility for his daughter’s education in that regard. The courts had found that the mother, who held custody, had simply complied with the girl’s wishes, thus appropriately guaranteeing the latter’s best interests (*Rupprecht v. Spain* (dec.); see also, for a fairly similar case assessed under Article 2 of Protocol No. 1, *X. v. the Netherlands*, Commission decision of 6 February 1968).

118. As regards *schooling*, Article 9 protects persons against religious indoctrination by the State (*Angeleni v. Sweden*, Commission decision; *C.J., J.J. and E.J. v. Poland*, Commission decision). Indeed, the principle to the effect that the States enjoy a considerable margin of appreciation concerning matters relating to the relationship between the State and religions and the significance to be attached to religion in society, particularly where these matters arise in the sphere of teaching and State education. While the States must ensure that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, and must refrain from pursuing any aim of indoctrination, they are nonetheless free to devise their school curricula according to their needs and traditions (*Osmanoğlu and Kocabaş v. Switzerland*, § 95). The Court affords a very high level of protection to the parental education of young children; it must therefore conduct in-depth, detailed scrutiny of each individual case in order to assess whether the full scope of the parents’ rights concerning the education of their children has been respected. Moreover, Article 9 does not entitle followers of a given religion or philosophy to refuse to allow their children to obtain State school teaching which might be contrary to their ideas, but merely prohibits the State from indoctrinating children by means of such teaching (*A.R. and L.R. v. Switzerland* (dec.), §§ 40 and 49). However, although it is parents who are primarily responsible for the education of their children, they cannot, relying on the Convention, require the State to provide a particular form of teaching or to organise lessons in a particular manner (*Osmanoğlu and Kocabaş v. Switzerland*, § 95).

119. As regards the case of a religious ceremony held in a public school, the Court found no violation of Article 9 regarding a seven-year-old pupil who had attended a short religious ceremony – a rite of blessing conducted by a Russian Orthodox at the beginning of the school year – where his parents, who belonged to a different religious denomination, had not been informed in advance of the event. The Court noted that it had been an isolated incident without any proselytising aim; that the child has been solely a passive observer at the ceremony; that he had not been forced to perform any rituals (such as making the sign of the cross or kissing the crucifix); and that the national authorities had reacted promptly to his parents' complaints by imposing a disciplinary sanction on the head teacher and taking action to prevent any recurrence of the same type of incident (*Perovy v. Russia*, §§ 70-77).

120. In some cases *compulsory school attendance* may come into conflict with a family's religious beliefs. For example, the organs of the Convention dismissed:

- an application concerning a refusal by the Swedish National School Board to exempt the applicant, a State school pupil who claimed to be an atheist, from the teaching of religious knowledge; she argued that such teaching required her to adopt a Christian mode of thought. The applicant also alleged discrimination contrary to Article 14 inasmuch as the Swedish legislation in force at the material time provided for exempting pupils from such religious knowledge classes provided that they belonged to a "religious congregation" and that they were receiving religious education from the latter; that did not apply to atheists. The Commission noted that the girl had already been largely exempted from the classes in question whenever they comprised elements of worship (hymn-singing, etc.). For the remainder the Court agreed with the Swedish Government that the teaching provided concerned *religions*, and not the teaching of *one specific religion*, even if it concentrated more on Christianity. The applicant was therefore not being subjected to religious indoctrination or being forced to take part in any particular type of worship (*Angeleni v. Sweden*, Commission decision; see, conversely, *Folgerø and Others v. Norway* [GC]);
- an application from parents who alleged discrimination owing to the fact that under Luxembourg legislation the only valid ground for exempting a pupil from religious and moral or moral and social education classes was adherence to religious belief, whereas they wanted their children to be exempted on the grounds of philosophical convictions. The Commission considered that in the absence of any allegation of religious or other indoctrination, the obligation on children taking moral and social education classes did not amount to interference in the exercise of freedom of thought or conscience. The difference in treatment complained of in this case had pursued a legitimate aim (reducing pupil absenteeism in order to provide all young people with moral education) and had been proportionate to that aim inasmuch as the relevant legislation stated that the classes in question had to specifically cover study of human rights and be organised in such a way as to guarantee diversity of opinion (*Bernard and Others v. Luxembourg*, Commission decision);
- an application from a Seventh-Day Adventist couple complaining of the Luxembourg municipal authorities' refusal to grant their son a general exemption from compulsory school on Saturdays, a day of absolute rest in this religious community. The Court decided that the impugned interference had been justified because of the need to guarantee the child's right to education, which had to take precedence over his parents' religious beliefs, and that a reasonable relationship of proportionality had been observed in the case in question (*Martins Casimiro and Cerveira Ferreira v. Luxembourg* (dec.)).

121. The Court also rejected parents' complaints under Article 9 in the following cases:

- a refusal by Turkish-Swiss parents of Muslim religion to send their daughters (who had not yet reached puberty) to compulsory mixed swimming lessons as part of their schooling,

and the refusal of the competent authorities to grant them exemption. The Court held that the case concerned an interference with the parents' right to freedom of religion. That interference had pursued a legitimate aim, namely to protect foreign students from any form of social exclusion. As regards proportionality, the Court highlighted the special position of the school in the social integration process, particularly for foreign children, pointing out, firstly, that the children's interest in having a complete schooling, facilitating their social integration in accordance with local customs and mores, took precedence over the parents' wish that their daughters be exempted from mixed swimming lessons, and secondly, that a child's interest in attending swimming lessons was not just to learn how to swim but above all to take part in that activity with all the other pupils. Furthermore, the authorities had offered the applicants very flexible arrangements in order to reduce the impugned impact of the interference in issue, including the possibility of wearing a burkini. The domestic authorities had therefore acted within the boundaries of their margin of appreciation (*Osmanoğlu and Kocabaş v. Switzerland*);

- the rejection by a Swiss State primary school of a request by a mother for an exemption for her daughter, who was seven years old at the time, from sex education. On the one hand, the mother had not backed up her complaint with an explanation of the fundamental ethical and moral values that would be affected if her daughter attended sex education classes; on the other hand, sex education at nursery and lower primary school levels was of a complementary rather than systematic nature, with the educational staff confining themselves to answering the children's questions and responding to their actions (*A.R. and L.R. v. Switzerland* (dec.)).

## 6. Preaching and proselytism

122. Freedom to manifest one's religion comprises, in principle, *the right to attempt to convince and convert other people*, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 of the Convention, would be likely to remain a dead letter (*Kokkinakis v. Greece*, § 31; *Nasirov and Others v. Azerbaijan*, § 60). On the other hand, Article 9 does not protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (*Larissis and Others v. Greece*, § 45).

123. For example, the Court found a violation of Article 9 in a case where the applicant, a Jehovah's Witness, had been arrested and criminally convicted of going to the home of the wife of the local Orthodox Church cantor and holding a discussion of a religious nature with her (*Kokkinakis v. Greece*). However, it adopted a more nuanced approach in another Greek case where the applicants, who had been air force officers at the material time, had been convicted by the military courts of proselytising several lower-ranking airmen and civilians. As regards attempts to convert *members of the armed forces*, the Court found that the impugned conviction did not infringe Article 9. It noted that the hierarchical structures which were a feature of life in the armed forces could colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient was free to accept or reject, could, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. Not every discussion about religion or other sensitive matters between individuals of unequal rank would fall into this category. Nonetheless, where the circumstances so required, States might be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces. Moreover, the Court found that the applicants' conviction for proselytising *civilians*, on whom they had exerted no pressure or coercion, had not been necessary in

a democratic society and was therefore in violation of Article 9 of the Convention (*Larissis and Others v. Greece*).

124. As regards preaching and proselytism, a statement from a preacher or writer to the effect that it is better to belong to his religion than not to belong to it is not censurable as such (see, under Article 10 read in the light of Article 9, *Ibragim Ibragimov and Others v. Russia*, § 117). The same applies to the use of military metaphors by a religious organisation, which is insufficient on its own to justify interference (*ibid.*, § 120).

## 7. Freedom of religious worship

125. Freedom of religion implies freedom to manifest one's religion not only alone and in private but also in community with others, in public and within the circle of those whose faith one shares. In other words, whether alone or *in community with others*, in public or in private, everyone is free to manifest his or her beliefs. Article 9 of the Convention lists various forms which the manifestation of a religion or belief can take, namely worship, teaching, practice and observance (*Güler and Uğur v. Turkey*, § 35). This means that Article 9 protects the right of believers to meet peacefully in order to worship in the manner prescribed by their religion (*The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*; *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, § 41). However, Article 9, taken alone or in conjunction with Article 11 of the Convention (freedom of assembly), does not bestow a right at large for applicants to gather to manifest their religious beliefs wherever they wish (*Pavlidis and Georgakis v. Turkey* (dec.), § 29).

126. For example, the Court found a violation of freedom of religion in the following cases:

- measures regulating the religious life of Greek Cypriots of Orthodox faith enclaved in the "Turkish Republic of Northern Cyprus", preventing them from leaving their villages to attend religious ceremonies in places of worship elsewhere or to visit a monastery (*Cyprus v. Turkey* [GC], §§ 243-246);
- the dispersal by the Russian police of a Sunday service held by Jehovah's Witnesses in the assembly hall of a State vocational secondary school, which the national Jehovah's Witnesses organisation rented on the basis of a lawfully concluded lease agreement. The police measure had been clearly unlawful and arbitrary, even in the light of domestic law (*Kuznetsov and Others v. Russia*). In another similar case the Court found a violation because of the dispersal of an annual Jehovah's Witnesses celebration held in the Agricultural Academy assembly hall, which had also been rented in conformity with domestic law. The impugned operation had been conducted by a large number of police officers, including an armed unit of the Special Police Force; the applicants were arrested and remanded in custody for several hours. Leaving aside the issue of the lawfulness of the interference, the Court found that it had clearly not been "necessary in a democratic society" (*Krupko and Others v. Russia*);
- the dispersal by the Moldovan police of a prayer meeting held by a group of Muslims in a private house and the imposition on the applicant of an administrative fine for "practising a religion not recognised by the State" (*Masaev v. Moldova*);
- the break-up by the Bulgarian police of a gathering of adherents of the Reverend Moon's Unification Church in an adherent's home, followed by a search of the apartment with the public prosecutor's authorisation, and finally, the seizure of books, recordings and other items, all because the religious community had not been registered by the State. The impugned measures had manifestly lacked any legal basis in domestic law. Furthermore, the domestic legislation had been unclear as regards the possibility of holding religious gatherings where the organisation in question had not been registered; at the material time there had been an administrative practice, supported by some domestic precedents, of declaring such gatherings unlawful (*Boychev and Others v. Bulgaria*);

- the summoning of an applicant to attend the local police station and her questioning on the subject of her religious beliefs, followed by a search of her home, accompanied by seizure of books and recordings, and lastly, a police warning ordering the applicant to discontinue the meetings in her home of the evangelical congregation to which she belonged. The Court concluded that there had been no statutory basis for the interference as the impugned measures had been implemented in the absence of any criminal investigation, in flagrant breach of domestic law (*Dimitrova v. Bulgaria*);
- a prison sentence passed on the applicants for having taken part in a Muslim religious ceremony (*mevlüt*) held on the premises of a political party in remembrance of three members of an illegal organisation who had been killed by the security forces. The Court took the view that the mere fact that the ceremony in question had been organised on the premises of a political party in which symbols of a terrorist organisation were displayed did not deprive the participants of the protection guaranteed by Article 9. In this case the penalty had not met the requirements of clarity and foreseeability since it would have been impossible to foresee that mere participation in a religious service would fall within the scope of the Law on the prevention of terrorism (*Güler and Uğur v. Turkey*).

127. Conversely, the organs of the Convention found no violation of Article 9 or declared the corresponding complaints manifestly ill-founded in the following cases:

- a decision by the UK authorities to close the Stonehenge site over the immediate period of the midsummer solstice and not to allow a group of Druids to celebrate their solstice ceremony there. The Commission considered that even assuming there had been an interference with the exercise of rights under Article 9, it had been aimed at protecting public safety and been justified within the meaning of Article 9 § 2, particularly because the authorities had previously expended considerable efforts to satisfy the interests of individuals and organisations interested in Stonehenge (*Chappell v. the United Kingdom*, Commission decision; see also *Pendragon v. the United Kingdom*, Commission decision);
- the sentencing to payment of a fine, suspended, for breach of the peace in respect of several persons opposing abortion who had entered the premises of an abortion clinic and prayed on their knees in one of the corridors. The Commission acknowledged that the activities in question fell within the scope of Article 9, but held that the interference complained of had been clearly justified in the light of Article 9 § 2 (*Van Schijndel and Others v. the Netherlands*, Commission decision);
- the inability of an applicant, who was a Cypriot national who had always lived in the southern part of the island, to visit churches and monasteries located in the northern area, i.e. in the territory of the “Turkish Republic of Northern Cyprus”. The Court noted that the applicant’s only link with the north of the island consisted of arable land which he had inherited from his parents and that there was nothing to prevent him from exercising his rights under Article 9 in southern Cyprus (*Josephides v. Turkey* (dec.));
- the interruption by the police of an Orthodox mass held without prior authorisation in a monastery, now used as a museum, located in the territory of the “Turkish Republic of Northern Cyprus”. The Court acknowledged that there had been a mistake in this case because the applicants had believed in good faith that they had been given authorisation, whereas to the authorities responsible for the cultural heritage the gathering in question had not been authorised and was unlawful. Nevertheless, in the light of all the relevant circumstances – no use of disproportionate force, the need to prevent conflicts in the specific political context of Northern Cyprus, etc. – the Court found that the impugned interference had not been disproportionate (*Pavlidis and Georgakis v. Turkey* (dec.)).



128. The Court declared the following applications inadmissible on the grounds that the legitimate interests mentioned in Article 9 § 2 clearly took precedence over the applicants' interest in observing certain rites prescribed by their religions:

- a municipal ban on a Roman Catholic parish ringing the church bell above a certain volume before 7.30 a.m. The Court decided that the interference had pursued the legitimate aim of protecting the rights of others – in this case the local residents' night rest – and was proportionate to that aim. In fact, the bell could still be rung provided the volume was reduced; no limit was imposed on the volume of ringing for the rest of the day (*Schilder v. the Netherlands* (dec.));
- the seizure and confiscation of a quantity of *ayahuasca*, an hallucinogenic substance which is consumed during ceremonies in the religion known as the "Santo Daime Church". The Court decided that the impugned measure, taken under drugs legislation, had been "necessary in a democratic society" for the protection of health. Inasmuch as the applicants had claimed to be victims of discrimination as compared with the Christian churches, which used alcohol (communion wine) in their ceremonies, the Court considered that the two situations were not comparable: first of all, wine was not subject to drugs legislation, and secondly, the rites of the Christian churches did not include the use of psychoactive substances for the purposes of intoxication (*Fränklin-Beentjes and CEFLU-Luz da Floresta v. the Netherlands* (dec.)).

129. The Court also declared inadmissible an application from a Greek Orthodox monastery complaining that the installation of telecommunications, radio and television aerials in the environs of the monastery infringed its freedom of worship. The Court found no interference with the rights secured under Article 9 because the monastery had long operated despite the presence of the aerials and had itself renewed the lease of the land on which they had been installed (*Iera Moni Profitou Iliou Thiras v. Greece* (dec.)).

130. Freedom of worship also applies to the *manner of burying the dead* inasmuch as it constitutes an essential aspect of religious practice (*Johannische Kirche and Peters v. Germany* (dec.) *Polat v. Austria*\*, §§ 51 et 54). However, in a case where the applicants complained of the time-lapse before the authorities had returned to them the body of their daughter who had died in hospital, as a result of which they had for many months been unable to give her a religious burial or pray on her tomb, the Court decided to assess the complaint exclusively under Article 8 of the Convention (respect for private and family life) on the ground that the act complained of had not involved a direct interference by the authorities with the rights guaranteed by Article 9 but was only a consequence of the delay caused, which the Court considered was susceptible to consideration under Article 8 (*Pannulo and Forte v. France* (dec.)). Conversely, the Court found a violation of both Articles 8 and 9 in a case where hospital doctors had carried out an autopsy on and removed organs from a premature baby who had died of a rare illness, despite the mother's objections and her specific wish for a ritual funeral in accordance with the Islamic requirement that the corpse had to remain intact. The Court took the view that the authorities had failed properly to balance the competing rights and interests, that is to say the requirements of public health and the mother's wish to bury her child in accordance with the precepts of her religion (*Polat v. Austria*\*, §§ 89-91).

## 8. Places and buildings of worship

131. Article 9 of the Convention protects, in principle, the right to provide, open and maintain places or buildings devoted to religious worship. Accordingly, under certain circumstances the operation of religious buildings is capable of having an impact on the exercise of the right of members of religious groups to manifest religious belief (*The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, § 30; *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, § 41). Moreover, the Court has acknowledged that if a religious community cannot have a place of



worship, its right to manifest its religion is rendered devoid of all substance (*Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, § 90). In some cases the fact that religious meetings in certain places are authorised or simply tolerated *de facto* by the domestic authorities may be insufficient to eliminate any risk of interference (*ibid.*, § 107).

132. The same general principles apply to *cemetery layout*, inasmuch as it constitutes an essential aspect of religious practice (*Johannische Kirche and Peters v. Germany* (dec.)).

133. Article 9 does not grant a religious community the right to obtain a place of worship from the public authorities (*Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.); *Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, § 97). The mere fact that the public authorities have tolerated the continued use of a State-owned building for religious purposes for a number of years gives rise to no kind of positive obligation on the part of those authorities (*Juma Mosque Congregation and Others v. Azerbaijan* (dec.), § 60). On the other hand, a religious community's inability to obtain a long-term lease on a plot of land where it already owns a building, with a view to erecting a new place of worship to meet the community's needs in terms of space can raise issues under Article 9 (*Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District v. Ukraine*, § 53).

134. Article 9 does not, as such, afford a religious community any right to the return of the ownership of a building of worship confiscated a long time previously (in the 1930s, in the case in hand) by the political regime of the time (*Rymsko-Katolytska Gromada Svyatogo Klimentiya v Misti Sevastopoli v. Ukraine* (dec.), §§ 59-63). Furthermore, Article 9 does not, in principle, prohibit the domestic authorities from prescribing the alternating use of a place of worship by two different religious communities, where this is justified by specific historical circumstances (*Gromada Ukrayinskoyi Greko-Katolitskoyi Tserkvy Sela Korshiv v. Ukraine* (dec.), §§ 33-38).

135. Nor do the provisions of the Convention imply any obligation on the State to grant special status to places of worship. Nevertheless, if the State itself offers special privileged status to places of worship – above and beyond its obligations under the Convention – it cannot deny this advantage to specified religious groups in a discriminatory manner contrary to Article 14 (*Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, §§ 48-49).

136. As a general rule, the Contracting States have a wide margin of appreciation in an area as complex and difficult as that of spatial development, in implementing their town-planning policy, since planning legislation is generally accepted as necessary in modern society to prevent uncontrolled development (*ISKCON and Others v. United Kingdom*, Commission decision; *Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, § 103; *Religious Community of Jehovah's Witnesses of Kryvyi Rih's Ternivsky District v. Ukraine*, § 51). In principle, therefore, the application of town-planning regulations corresponds to the legitimate aim of protecting public order within the meaning of Article 9 § 2 of the Convention (*ibid.*, § 95). Nevertheless, the Court cannot waive its powers of review, and it is always for the Court to satisfy itself that the requisite balance has been preserved in a manner compatible with the applicants' right to the freedom to manifest their religion (*ibid.*, § 103). Indeed, even implementing neutral and broadly applicable urban planning regulations can, in specific circumstances, amount to an interference with the exercise of freedom of religion (*The Religious Denomination of Jehovah's Witnesses in Bulgaria v. Bulgaria*, §§ 100-101). As a general rule, however, if the national authorities have given adequate weight to freedom of religion in balancing the various planning considerations, a religious organisation cannot use the rights secured under Article 9 to circumvent existing planning legislation (*ISKCON and Others v. the United Kingdom* (dec.)). In some cases, when carrying out this balancing exercise, the authorities must have regard to the specific needs of small communities of believers (*Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, § 105).

137. For instance, the Court found a violation of freedom of religion in the following cases:

- – the sentencing of applicants to a prison term and a fine for having used a private room which they had rented to serve as a place of worship for the Jehovah’s Witnesses, without having obtained prior authorisation from the “recognised ecclesiastical authority” (i.e. the local Greek Orthodox bishop) and the Ministry of Education and Religious Affairs. The Court found that the relevant provisions of domestic law conferred an exorbitant discretionary power on the authorities in this sphere, which power they used in practice to restrict the activities of denominations other than the dominant Orthodox Church (*Manoussakis and Others v. Greece*; see also the Commission’s opinion the case of *Pentidis and Others v. Greece*, which led to the case being struck off);
- – the closing of private premises previously used by two congregations of Turkish Jehovah’s Witnesses on the basis of a law prohibiting the opening of places of worship on sites not set aside for that purpose, and the subsequent dismissal of their requests to use those premises as places of worship. In this case the congregations were also informed that the local urban development plans did not include any suitable site for a place of worship. The Court noted that the domestic authorities had not considered the specific needs of a small community of believers, as the limited number of adherents meant that the congregations in question needed, not a building with a specific type of architecture, but a simple meeting room where they could hold their services, meet and teach their religion (*Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*);
- – a religious community’s inability to obtain a long-term lease on a plot of land belonging to the municipality, in order to erect a new “Kingdom Hall” (place of worship), despite the fact that that community already owned a building on that plot of land which it used as a place of worship, and that all the formal conditions for allocating the land had been fulfilled. The infringement was ruled “not prescribed by law” within the meaning of Article 9 § 2 (*Religious Community of Jehovah’s Witnesses of Kryvyi Rih’s Ternivsky District v. Ukraine*, §§ 52-59).
- a series of measures adopted by the local authorities preventing a Jehovah’s Witnesses association from building a place of worship on a plot of land which they owned, and in particular the abrogation of the municipal decree authorising construction on that plot of land and the protracted suspension of the building work on account of breaches of the regulations in force, followed by the mayor’s refusal to authorise resumption of work on the site: even though none of those measures had been officially motivated by the religious status of the applicant association, the context of the case – especially the public statements by the mayor supporting protests against the Jehovah’s Witnesses – led to a finding that there had been a disproportionate interference in the exercise of freedom of religion (*The Religious Denomination of Jehovah’s Witnesses in Bulgaria v. Bulgaria*).

138. On the other hand, the Court found no violation of Article 9 (or declared the application manifestly ill-founded) in the following cases:

- a decision by the Greek authorities ordering an adherent of the Greek Orthodox Church to move his father’s grave in order to facilitate road widening works. The Commission noted that other individuals of Orthodox religion in the same situation had voluntarily moved their family graves and that the Greek Orthodox Church authorities contacted by the applicant had refused to intervene in his favour. Moreover, the applicant had not demonstrated how the fact of moving the grave would prevent him from discharging the duties prescribed by his beliefs or how the discharging of those duties could require the grave to remain in its original place (*Daratsakis v. Greece*, Commission decision);
- notice served by a local planning authority on the International Society for Krishna Consciousness Ltd. concerning the use of a manor purchased by that society and ordering it to restrict its use to that which had been authorised at the time of purchase (residential theological college and place of worship accommodating a maximum of one thousand

visitors per day); in fact, the actual use of the manor for religious purposes had since greatly expanded, attracting large crowds and leading to numerous complaints from neighbours. The Court acknowledged that there had been an interference in the applicant society's exercise of freedom of religion, but that such interference had been justified under Article 9 § 2; it found in particular that the local authorities had made constant efforts to reach a friendly settlement of the problem and that the applicant society's particular religious interest had been adequately taken into account in the domestic decision-making process (*ISKCON and Others v. the United Kingdom* (dec.));

- the behaviour of the curator appointed by the Austrian courts to manage the property of a Serbian Orthodox community whose power to act in the sphere of secular law had been suspended by law owing to the community's schismatic situation *vis-à-vis* the Belgrade Patriarchate: the curator had concluded tenancy contracts with two priests appointed by the Serbian Patriarch and the competent bishop. Even supposing that there had been an interference in the exercise by the applicant of its rights under Article 9, the interference had been necessary for the protection of the rights of others and had been proportionate to that aim, because the impugned measure had been limited in scope and the tenancy contracts would only remain valid as long as the schismatic situation lasted (*Serbisch-griechisch-orientalische Kirchengemeinde zum Heiligen Sava in Wien v. Austria*, Commission decision);
- the German authorities' refusal to grant a religious organisation a permit to install a cemetery in an undeveloped protected zone. The Court held that the impugned interference, which had been based on legal provisions relating to planning, environmental conservation and installation of public services, and had in particular been motivated by the fact that there were no other constructions in the zone in question, was in conformity with Article 9 § 2 (*Johannische Kirche and Peters v. Germany* (dec.));
- the Greek local authorities' dismissal of an applicant's request to amend the local development plan in order to enable him to build a house of prayer for the "True Orthodox Christians" (Greek Old Calendarists, or "*Paleoimerologites*") on a plot of land which he owned; the reason given for this refusal was that there was no "social need" to amend the development plan because the municipality included insufficient numbers of members of the religious community in question. The Court found that in contrast to the *Manoussakis and Others v. Greece* case, this case concerned the application of a general spatial planning law which was, on the face of it, neutral. The quantitative criterion applied by the Greek Supreme Court could not be described as arbitrary, because authorisation to amend the local development could only be granted for the construction of a building "in the public interest". In such an hypothesis it was reasonable to take account of the objective needs of the religious community since the public interest in rational spatial planning could not be supplanted by the religious needs of one single person, whereas a neighbouring town comprised a house of prayer catering for the needs of the "True Orthodox Christians" in the region. The State had therefore acted within the limits of its margin of appreciation (*Vergos v. Greece*);
- the fining of the applicants, who were members of a Turkish protestant church, for having used as a place of worship a private apartment which they had purchased, without having complied with the requisite formalities under Turkish law, especially the mandatory prior agreement of all the joint owners of the building. The Court found that unlike in the case of *Manoussakis and Others v. Greece*, the formalities did not concern the recognition or the exercise of any religion and could not, therefore, be regarded as equivalent to prior authorisation; they were geared solely to protecting the rights and freedoms of others and public order. The Court also noted that the national authorities had balanced compliance with the formalities in question with the requirements of freedom of religion by first of all inviting the applicants to comply with those formalities. That being the case, the impugned

interference could be seen as having been justified and proportionate. Lastly, the Court noted nothing to suggest that the relevant legislation had been applied to the applicants in a discriminatory manner in breach of Article 14 of the Convention (*Tanyar and Others v. Turkey* (dec.));

- the expulsion of a Muslim congregation from an old Mosque building listed as an historic monument, in pursuance of a final judgment; despite the fact that the applicant congregation had been using the building for more than ten years, it neither owned nor rented it (contrasting with the situation in *Manoussakis and Others v. Greece*). In particular, the applicant congregation had not argued that it could not freely set up a place of worship elsewhere (*Juma Mosque Congregation and Others v. Azerbaijan* (dec.)).

139. The Court also considered an application from an individual under Articles 14 and 9 of the Convention concerning a ban on building minarets which had been added to the Swiss Federal Constitution by referendum. It decided that as the applicant was not directly affected by the impugned measure and had never voiced any wish himself to build a mosque with a minaret, he could not claim to be a “victim” of the alleged violation (*Ouardiri v. Switzerland* (dec.)).

140. The Commission declared admissible a complaint under Article 9 that the annulment of the property deeds of the *Institut de prêtres français*, a Roman Catholic institute established under canon law and located in Turkey, protected by the 1923 Treaty of Lausanne, and the registration of the property in question in the name of the Treasury, had had the effect of cutting the institute off from its vital resources and rendering it incapable of providing religious services and ensuring the survival of the Church (*Institut de prêtres français and Others v. Turkey* (dec.)). In proceedings before the Court this case ended with a friendly settlement (*Institut de prêtres français and Others v. Turkey* (friendly settlement)).

## C. Freedom of religion and immigration

### 1. Residence and employment of foreigners in the national territory and freedom of religion

141. The Convention does not guarantee as such the right to enter or reside in a State of which one is not a national. Under a well-established principle of international law the Contracting States are entitled to control the entry, stay and removal of non-nationals (*Perry v. Latvia*, § 51). Accordingly, Article 9 of the Convention *does not guarantee as such the right of a foreigner to remain in a given country*. Expulsion is therefore not, as such, an interference in the exercise of the rights secured under this provision, unless it can be established that the expulsion order was designed to repress the exercise of such rights and stifle the spreading of the religion or philosophy of the applicant and his followers (*Omkarananda and Divine Light Zentrum v. Switzerland*, Commission decision).

142. For example, the Court found a violation of Article 9 in the following cases:

- the initial refusal of the competent national authority to extend the residence permit of an applicant, an American evangelical pastor, followed by the issue of a different type of permit accompanied by a semi-informal explanation that he was no longer entitled to engage in public religious activities; that restriction had no basis in domestic law (*Perry v. Latvia*);
- the *refoulement* of an applicant, an American national active in the Church of Reverend Moon’s Unification Church, cancelling his visa and preventing him from entering Russia, even though he had lawfully resided there for years and his under-age son was living in the country; that measure had very clearly been triggered by the applicant’s religious activities in Russia. The respondent Government submitted that the applicant jeopardised national

security – a ground which is not provided for in Article 9 § 2 of the Convention – without substantiating that submission (*Nolan and K. v. Russia*).

143. The Court also declared admissible the following complaints, without subsequently finding a violation of Article 9:

- the cancellation of the permanent residence permit of the applicant, an ethnic Palestinian preacher and teacher of Islamic religion, certified by the Grand Mufti of Bulgaria, and his expulsion from the national territory on the ground that his religious activities had been geared to imposing the fundamentalist version of Islam and showed that he was linked to the “Muslim Brothers”, an extremist organisation (*Al-Nashif v. Bulgaria* (dec.)). Finding a violation of Article 8 of the Convention (right to respect for family life), the Court did not consider it necessary to assess the applicant’s other allegation of violation of his freedom of religion (*Al-Nashif v. Bulgaria*, §§ 139-142);
- the cancellation of the residence permits of two applicants, a Jehovah’s Witness couple of Austrian nationality, because of their alleged religious activities in Bulgaria (*Lotter v. Bulgaria* (dec.)). This case ended with a friendly settlement (*Lotter and Lotter v. Bulgaria* (friendly settlement)).

144. On the other hand, the Commission declared inadmissible as manifestly ill-founded an application concerning an expulsion order against an Indian monk and philosopher who had been found guilty of endangering public order because of persistent breaches of the peace in his local neighbourhood; this order had not been enforced because the applicant had in the meantime been found guilty of a series of criminal offences and sentenced to fourteen year’s imprisonment and expulsion from Switzerland for fifteen years (*Omkarananda and Divine Light Zentrum v. Switzerland*, Commission decision).

145. Furthermore, Article 9 of the Convention does not grant foreign nationals the right to obtain a residence permit for the purposes of taking up *employment* in a Contracting State, even where the employer is a religious association (*Öz v. Germany*, Commission decision; *Perry v. Latvia*; *El Majjaoui and Stichting Toubas Moskee v. the Netherlands* (striking out) [GC], § 32). Pursuant to this principle the Commission dismissed an application complaining of the failure to renew a temporary residence permit issued to a Muslim minister of religion and religious teacher (imam) of Turkish nationality whose employment contract with the local Islamic association had terminated and who wished to remain in Germany in order to work – still as an imam – for an association other than the one which had originally invited him there (*Öz v. Germany*, Commission decision).

146. More recently, the Court declared admissible an application concerning a refusal by the Netherlands authorities to issue a Moroccan national with the residence permit which he needed in order to take up employment as an imam by a religious foundation, on the ground, in particular, that the foundation had not made sufficient efforts to find other candidates on the national and European labour market and that it had not begun by attempting to recruit its imam from among those trained in the Netherlands (*El Majjaoui and Stichting Toubas Moskee v. the Netherlands* (dec.)). However, following a fresh request from the foundation, the applicant finally obtained a temporary work permit and residence permit in the Netherlands; the Court therefore considered that the dispute had been settled and struck the application out of its list, in conformity with Article 37 § 1 b) of the Convention (*El Majjaoui and Stichting Toubas Moskee v. the Netherlands* (striking out) [GC], § 32).

147. The Court found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 9 in a case where the Austrian authorities had refused to exempt the Jehovah’s Witness community from the Employment of Aliens Act, which would have allowed a residence permit to be issued to a couple who were both preachers holding Philippines nationality and whom the applicant community wished to employ in Austria. In fact, under domestic law such an exemption was only



allowed for “recognised religious associations” but not for “registered” religious organisations such as the applicant community (*Jehovas Zeugen in Österreich v. Austria*).

## 2. Expulsion to a country which violates freedom of religion

148. Can a Contracting State *expel* foreign nationals to a third country in which they are likely to be considerably impeded in the exercise of their freedom of religion? Admittedly a Contracting State’s responsibility can be incurred indirectly if it imposes on individuals a genuine risk of violation of their rights in a country outside its jurisdiction. The Court has acknowledged such responsibility in cases of risks of violation of Articles 2 (right to life) and 3 (prohibition of torture). The Court’s case-law on this point is based on the fundamental importance of those articles, as the safeguards which they lay down must needs be rendered effective in practice, as well as on the absolute nature of the prohibition of torture and the fact that it encapsulated an internationally accepted standard; the Court also emphasised the serious and irreparable nature of the suffering risked. Later on the Court extended the same principle, under certain conditions, to the guarantees of Articles 6 (right to a fair trial) and 5 (right to liberty and security). Nevertheless, these overriding considerations are not automatically applicable under the other provisions of the Convention. On a purely pragmatic basis, 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. Even if the rights secured under Article 9 constitute “one of the foundations of a democratic society”, this is first and foremost the standard applied within the Contracting States, which are committed to democratic ideals, the rule of law and human rights. Of course, under the above-mentioned case-law, protection is offered to those who have a substantiated claim that they will either suffer persecution for, *inter alia*, 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). Where an individual claims that on return to his own country he would be impeded in his religious worship in a manner which falls short of those proscribed levels, very limited assistance, if any, can be derived from Article 9 by itself. Otherwise it would be imposing an obligation on Contracting States effectively to act as indirect guarantors of freedom of worship for the rest of world. If, for example, a country outside the umbrella of the Convention were to ban a religion but not impose any measure of persecution, prosecution, deprivation of liberty or ill-treatment, it is doubtful whether the Convention could be interpreted as requiring a Contracting State to provide the adherents of that banned sect with the possibility of pursuing that religion freely and openly on their own territories (*Z. and T. v. the United Kingdom* (dec.)).

149. Nevertheless, the Court has not dismissed the possibility that the responsibility of a State expelling an individual can exceptionally be incurred under Article 9 of the Convention if the applicant runs a real risk of a flagrant violation of this article in the receiving country; however, according to the Court, it is difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention (*Z. and T. v. the United Kingdom* (dec.)).

150. In the light of the foregoing, the Court declared manifestly ill-founded an application lodged by two Christians of Pakistani nationality who had submitted that if they were expelled to Pakistan they would not be able fully to exercise their right to freedom of religion. The Court noted that the applicants had failed to make out a case of persecution on religious grounds or to substantiate that they were at risk of a violation of Articles 2 or 3. Neither applicant had herself been subject to any physical attack or prevented from adhering to her faith. Assessing the general situation in Pakistan, the Court noted that despite recent attacks on churches and Christians, the Christian community in Pakistan was under no official bar, they had their own parliamentary representatives, and the Pakistani law enforcement and judicial bodies respectively were taking steps to protect churches and schools and to arrest, prosecute and punish those who carried out attacks. In those circumstances,



the Court found that the applicants had not shown 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 (*Z. and T. v. the United Kingdom* (dec.); see also *Razaghi v. Sweden* (dec.)).

### III. The State's obligations as guarantor of freedom of religion

#### A. Negative obligations: obligation not to impede the normal functioning of religious organisations

##### 1. Legal status of religious organisations in the contracting States

151. In Europe there is no one model for relations between the State and the religious communities; quite the contrary: Europe has a wide variety of constitutional models governing such relations (*Sindicatul "Păstorul cel Bun" v. Romania* [GC], § 138). The current systems can be divided into three categories: a) existence of a State Church; b) complete separation between the State and all religious organisations; and c) concordat-type relations (the latter is the predominant model in European countries). The Court has acknowledged that all three types of system are, as such, compatible with Article 9 of the Convention, and that it is not its place to impose on a respondent State a particular form of cooperation with the various religious communities (*İzzettin Doğan and Others v. Turkey* [GC], § 183).

152. Some European States have a *State Church* (or Official Church) endowed with a special constitutional status. Such a system is not *per se* contrary to Article 9 of the Convention; in fact, it was already in force in the aforementioned States when the Convention was drawn up and those States became Parties to it. Moreover, the Court has ruled that the State's duty of neutrality in religious matters cannot be conceived as being likely to diminish the role of a faith or a Church with which the population of a specific country has historically and culturally been associated (*Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, § 132); indeed, in some countries, the independence and unity of the historically dominant majority Church are matters of the utmost importance for society in general (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*, § 118). The legal personality of such a Church may be recognised by law (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, § 157). At all events the decision whether or not to perpetuate a tradition falls, in principle, within the margin of appreciation of the respondent State. The Court must, moreover, take account of the great diversity in Europe among its component States, particularly in the sphere of cultural and historical development. However, 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 (*Lautsi and Others v. Italy* [GC], § 68). If a State Church system is to satisfy the requirements of Article 9, it must include specific safeguards for the individual's freedom of religion. In particular, no one may be forced to enter, or be prohibited from leaving, a State Church (*Ásatrúarfélagið v. Iceland* (dec.), § 27; see also *Darby v. Sweden*, Commission's report, § 45).

153. Furthermore, even in States which have a State Church, a decision taken by that Church in fields for which it is responsible does not incur the State's responsibility under the Convention. For example, the Commission considered a complaint lodged by a Finnish-speaking parish of the Church of Sweden – a State Church at the time – concerning a decision taken by the Assembly of the Church prohibiting it from using the liturgy of the Finnish Lutheran-Evangelical Church and imposing the use

of the Swedish liturgy translated into Finnish. The Commission held that the Church and its parishes were “non-governmental organisations” and that the State could not be held responsible for an alleged violation resulting from a decision by the Assembly of the Church. Given that the applicant parish would not be prevented from leaving the Church of Sweden, the State had in no way failed in its obligation to protect the parish’s freedom of religion (*Finska Församlingen i Stockholm and Hautaniemi v. Sweden*, Commission decision).

154. In other States the constitutional model is based on the principle of *secularism*, which involves complete separation of State and all religious communities. The Court has declared that such a model is also compatible with the values underpinning the Convention (*Leyla Şahin v. Turkey* [GC], § 108; *Dogru v. France*, § 72). The principles of secularism and neutrality give expression to one of the rules governing the State’s relations with religious bodies, a rule which implies impartiality towards all religious beliefs on the basis of respect for pluralism and diversity (*Ebrahimian v. France*, § 67).

155. Finally, States whose constitutional model so permits can conclude a *cooperation agreement* with a specific Church (or several Churches) providing for special (tax or other) status for the latter, 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 (*Alujer Fernández and Caballero García v. Spain* (dec.); *Savez crkava “Riječ života” and Others v. Croatia*, § 85). The State can also make a religious organisation subject to a special regime different from the others by exempting it from compulsory registration or declaration and recognising its legal personality *ex lege* (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*). Indeed, a State may have other legitimate reasons for restricting eligibility for a specific system to certain religious denominations. It may also, in some circumstances, make justified distinctions between different categories of religious communities or offer other forms of cooperation (*İzzettin Doğan and Others v. Turkey* [GC], § 175). However, if a State sets up a framework for conferring legal personality on religious groups together with a specific status, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*; *İzzettin Doğan and Others v. Turkey* [GC], § 175); *Ancient Baltic religious association “Romuva” v. Lithuania\**, § 126). Freedom of religion in no way implies that religious groups or adherents of a religion must be granted a specific legal status different from that of other existing bodies; if, however, such a status has been set up, it must be granted in a non-discriminatory manner (*Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, § 45). It is not the Court’s task to determine whether the applicant association should or should not have been granted State recognition, but whether it was given a fair opportunity to apply for that status and whether the criteria established in the law were applied in a non-discriminatory manner (*Ancient Baltic religious association “Romuva” v. Lithuania\**, § 136).

156. The State may also *delegate specific public tasks and functions to one or more religious organisations*, whereby the delegation of such tasks and functions and their mode of financing are matters for the State’s margin of appreciation (*Bruno v. Sweden* (dec.); *Lundberg v. Sweden* (dec.)).

157. Lastly, it should be remembered that in this difficult sphere of establishing relations between religions and the State, the latter benefits, in principle, from a wide margin of appreciation (*Cha’are Shalom Ve Tsedek v. France* [GC], § 84). However, that margin is not infinite, and the Court sometimes notes that the respondent State has overstepped it in choosing the forms of cooperation with the various faiths (*İzzettin Doğan and Others v. Turkey* [GC], § 132).

## 2. Recognition, registration and dissolution of religious organisations

158. The way in which national legislation enshrines freedom of association and its practical application by the authorities reveal the state of democracy in the country concerned. It is only

natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as the exceptions to the rule of freedom of association are to be construed strictly, and only convincing and compelling reasons can justify restrictions on that freedom (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*, §§ 94-96).

159. One of the most radical forms of interference with the collective aspect of freedom of religion is the *dissolution* of an existing religious organisation. Such a drastic measure requires very serious reasons by way of justification in order to be recognised as “necessary in a democratic society” (*Biblical Centre of the Chuvash Republic v. Russia*, § 54).

160. For example, the Court found a violation of Article 9, read in conjunction with Article 11 of the Convention, in the following cases:

- the dissolution of a local branch of the Jehovah's Witnesses and the prohibition of its activities, as ordered by the Russian courts at the prosecutor's request. Having examined all the findings of the domestic courts (alleged pressure on adherents' families geared to destroying them; alleged interference with adherents' private life and with their right to choose their occupations; alleged violations of the parental rights of parents not belonging to the Jehovah's Witnesses; allegations of “brainwashing” and “mind control”; alleged incitement to suicide or refusal of medical treatment, including prohibition of blood transfusions; alleged luring of minors into the organisation; incitement not to serve in the army, to disrespect State emblems and refuse to take part in national celebrations), the Court found that all the allegations either had not been supported by concrete evidence or had concerned quite normal manifestations of freedom of religion freely chosen by the adherents in the framework of their personal autonomy as protected by Article 9. Moreover, these manifestations were very similar to the practices of the major “traditional” religions worldwide (fasting, asceticism, restrictive precepts in private life, etc.). the dissolution of the organisation had therefore been manifestly disproportionate to the legitimate aims pursued, especially since the legislation applied in this case had been extremely rigid and did not allow for possible wrongdoing by a religious community to be punished with any sanction less drastic than dissolution (*Jehovah's Witnesses of Moscow and Others v. Russia*);
- the dissolution by the Russian courts of a protestant (Pentecostal) biblical centre on the ground that it ran a Sunday school for children and a Biblical College for adults (issuing certificates or “diplomas” on completion of studies) which lacked legal-entity status. The reasons for the dissolution were, first of all, the fact that the Biblical College had been opened without prior authorisation, and secondly, the fact that the two bodies in question had failed to comply with the health and safety requirements set out in the relevant legislation. The Court noted that the authorities had not given the applicant organisation any prior warning, which would have enabled it to comply with any legal or statutory requirements. Furthermore, the applicant organisation could not reasonably have foreseen the consequences of its acts because of the Russian courts' contradictory case-law, with some judgments declaring that a study centre such as the Sunday school at issue did not require special authorisation (*Biblical Centre of the Chuvash Republic v. Russia*).
- the Moldavan authorities' refusal to execute two judgments of the national Supreme Court acknowledging a violation of Articles 9 and 11 of the Convention in respect of two associations practising Falun Gong on account of their dissolution and the prohibition of their religious symbol, as well as a refusal by the same Supreme Court to award the applicant associations adequate compensation (*A.O. Falun Dafa and Others v. Moldova*).

161. There are also other forms of interference which may be placed in the same category as dissolution. Religious societies have traditionally and universally existed in the form of organised bodies. Accordingly, interpreting Article 9 in the light of Article 11 of the Convention, the Court has ruled that the ability to set up a legal entity recognised by the State in order to guarantee the capacity for collective action in the religious sphere is one of the most important aspects of freedom of religion, without which that freedom would be meaningless. Consequently, the refusal to recognise the *legal personality* of a religious community or to grant it such personality constitutes interference with the exercise of the rights secured under Article 9, in their external and collective dimension, in respect of the community itself but also of its members (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 105; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 62). Indeed, under Article 11, the Court has found that the ability to establish a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of freedom of association, without which that right would be deprived of any meaning. A refusal by the domestic authorities to grant legal-entity status to an association, religious or otherwise, of individuals amounts to an interference with the exercise of the right to freedom of association. In this regard, the authorities' refusal to register a group directly affects both the group itself and its presidents, founders or individual members (*Kimlya and Others v. Russia*, § 84). The same principles fully apply under Article 9 (*Genov v. Bulgaria*, § 35).

162. Moreover, where a group of believers complains of a refusal by the domestic authorities to register their religious organisation, any individual member of the organisation can claim to be a "victim" of a violation for the purposes of Article 34 of the Convention; there is therefore no reason to grant victim status solely to the persons who lodged the request for registration (*Metodiev and Others v. Bulgaria*, § 24).

163. Mere tolerance by the national authorities of the activities of a non-recognised religious organisation is no substitute for recognition if recognition alone is capable of conferring rights on those concerned (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 129; *İzzettin Doğan and Others v. Turkey* [GC], § 127). Even where legislation expressly authorises the operation of unregistered religious groups, that is insufficient if domestic law reserves a whole series of rights essential for conducting religious activities for registered organisations with legal personality (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 122). Those rights include those to own or rent property, to maintain bank accounts, to hire employees, to ensure judicial protection of the community, its members and its assets, to establish places of worship, to hold religious services in places accessible to the public, to produce, obtain and distribute religious literature, to create educational institutions, and to maintain contacts for international exchanges and conferences (*Kimlya and Others v. Russia*, §§ 85-86; *Genov v. Bulgaria*, § 37). Moreover, 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 guaranteeing the 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 § 1 of the Convention on the right to a fair trial and to access to a tribunal (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 152; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 63).

164. All the considerations set out in the previous paragraph are especially true in cases where domestic law does not allow a religious association to acquire legal personality by being registered or recognised as a non-religious organisation under the general regulations governing associations (*Genov v. Bulgaria*, § 37; *Metodiev and Others v. Bulgaria*, § 36). Furthermore, the fact that the religious community's lack of legal personality may be compensated in part by running auxiliary associations is not decisive and does not solve the problem (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 67; *İzzettin Doğan and Others v. Turkey* [GC], § 130).

165. As regards the recognition and registration of religious communities, States are empowered to verify whether a movement or association is conducting, for ostensibly religious purposes, activities

harmful to the population or endangering public security. Since it cannot be ruled out that an organisation's programme might conceal objectives and intentions different from the ones it proclaims, to verify that it does not the content of the programme might be compared with the organisation's actions and the positions it defends (*Metropolitan Church of Bessarabia and Others v. Moldova*, §§ 105 and 125). The State may also require the statutes of a religious association to clearly define the corresponding beliefs and observance, so that the public can differentiate the various denominations and in order to avoid confrontation among the different religious communities (*Metodiev and Others v. Bulgaria*, §§ 40 and 45). Accordingly, the refusal to register a religious organisation on the ground that it has not provided the authorities with a description of the fundamental precepts of the religion in question may be justified by the need to establish whether that organisation presents any danger for a democratic society and the fundamental interests recognised by Article 9 § 2 (*Cârnuirea Spirituală a Musulmanilor din Republica Moldova v. Moldova* (dec.); *Church of Scientology of Moscow v. Russia*, § 93; *Lajda and Others v. the Czech Republic* (dec.)). Nevertheless, although States do have a right of scrutiny concerning the conformity of the objectives and activities of a religious association with the rules established by legislation, they must use it sparingly, in a manner compatible with their obligations under the Convention and subject to the purview of the organs of the Convention (*Jehovah's Witnesses of Moscow and Others v. Russia*, § 100; *Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*, § 94).

166. The *waiting time* for the authorities to consider an application for recognition or registration and scrutinise conformity as mentioned above must be reasonably short (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, § 79). Similarly, where a State's legal system comprises religious organisations which are specially privileged as compared with others (holding, for example, legal-entity status), the State may exceptionally impose a longer waiting and verification period, particularly 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 (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, §§ 97-98).

167. A State may also legitimately impose specific conditions concerning the name of a religious organisation, including the requirement that it is clearly different from the names of existing organisations. Identical or overly similar names can cause confusion and misapprehensions among the general public, thus creating a risk of serious encroachment on the rights and interests of others (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*, § 111; *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*, § 71). Therefore, the fact of requiring a newly founded legal entity to adopt a name which is not likely to mislead the public and enables it to be distinguished from other similar organisations may, in principle, be considered as a justified restriction on the right of a religious organisation to freely choose its name (*Genov v. Bulgaria*, § 43).

168. For example, the Court found a violation of Article 9 of the Convention (taken alone and/or in conjunction with Article 14) in the following cases:

- the Moldovan authorities' refusal to grant legal recognition to the Metropolitan Church of Bessarabia, an autonomous Orthodox Church operating under the authority of the Patriarchate of Bucharest (the Romanian Orthodox Church), on the ground that such recognition would infringe the interests of the Metropolitan Church of Moldova, which comes under the Patriarchate of Moscow (the Russian Orthodox Church), which is already recognised by the Government. Lacking legal recognition, the applicant church was unable to engage in its activities; its priests could not conduct divine service, its members could not meet to practise their religion and, moreover, lacking legal personality, it was not entitled to judicial protection of its assets or allowed to defend itself against acts of intimidation. By denying recognition on the ground that the applicant church was only a



“schismatic group” within the Orthodox Church, the Moldovan Government had failed in their duty of neutrality and impartiality. For the remainder, the Government’s submissions accusing the applicant church of jeopardising the country’s territorial integrity and social stability were manifestly ill-founded (*Metropolitan Church of Bessarabia and Others v. Moldova*);

- in the same context as the foregoing case: a refusal by a local authority to issue the applicants with a certificate which they needed in order to register the Metropolitan Church of Bessarabia, on the ground that the Metropolitan Church of Moldova was already registered and operated in the area in question; the Court found that the impugned interference was not “prescribed by law” (*Fusu Arcadie and Others v. the Republic of Moldova*);
- a refusal by the competent administrative authority to register the applicant Church despite a judgment ordering it to do so; in this case the Court found that the impugned interference was not “prescribed by law” (*Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*);
- a refusal by the Bulgarian authorities to register a new religious association entitled “Ahmadiyya Muslim Community” as a denomination, on the grounds that its statutes did not set out sufficiently clear and full information on the beliefs and observance of the Ahmadi denomination, which made it difficult to distinguish it from the Muslim religion as already recognised. In this case Bulgarian law did not set out any specific provisions on how detailed such a description of beliefs and observance should be and what specific information should be entered on the registration application form, which could in practice allow the authorities to refuse to register any new religious association holding the same doctrine as a pre-existing denomination (*Metodiev and Others v. Bulgaria*);
- a time-lapse of twenty years between the lodging with the Austrian authorities of an application for legal recognition by a Jehovah’s Witnesses congregation and the authorities’ decision finally to grant it “registered” religious organisation status. The Court also found that there had been discrimination in breach of Article 14 as a result of the refusal to grant the applicant community “recognised religious society” status, which embraced legal personality and bestowed a whole series of privileges under domestic law, on the ground that it had not operated as a “registered” organisation in Austria for a minimum of ten years. The respondent Government had not demonstrated the existence of any objective and reasonable justification for this difference in treatment, especially since the “ten-year” requirement had not been applied to another religious community in a similar situation to that of the Jehovah’s Witnesses (*Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*);
- the Russian authorities’ refusal to register two local branches of the Church of Scientology as “religious organisations”, which would have automatically given them legal entity status, on the ground that they had not been operating in Russia as “religious groups” (without legal personality) for at least fifteen years. Finding a violation of Article 9 interpreted in the light of Article 11, the Court noted that the respondent Government had not mentioned any overriding social need in support of the impugned restriction or any relevant and sufficient reason justifying such a long waiting period; in particular, it had never been contended that the applicants – as a group or as individuals – had conducted or intended to conduct any unlawful activities or had pursued aims other than those of religious worship, teaching, practice and observance. The reason for the denial of registration had been purely formal, unrelated to the operation of the groups in question, and the only “offence” of which the applicants had been found guilty was their intention to apply for the registration of an association of a “religious nature” which had not existed in the region for a minimum of fifteen years (*Kimlya and Others v. Russia*). In another very similar case, one



of the reasons given for rejecting the application for registration was the fact that the local municipal council had no competence to issue such a certificate. In contrast to the *Kimlyā and Others v. Russia* case, the Court found that the interference had not been “prescribed by law” and that it was therefore unnecessary to consider the issue of its proportionality (*Church of Scientology of St Petersburg and Others v. Russia*);

- the Croatian Government’s arbitrary and discriminatory refusal to conclude with the applicants, several Reformist Churches, a cooperation agreement in public-interest fields enabling these Churches to provide religious education in State schools and guarantee recognition of the civil effects of marriages celebrated by their ministers. In this case the Government had justified its refusal by the fact that the applicants had not satisfied, either individually or jointly, the criteria set forth in a governmental instruction for the purposes of concluding such agreements. Nevertheless, several other communities had been exempted from the numerical criterion, and as to the historical criterion (“historic religious communities of European cultural circle”), the Government had not explained why the applicant Churches, of the Protestant reformist tradition, failed to satisfy it. The Court therefore found a violation of Article 14 of the Convention (*Savez crkava “Riječ života” and Others v. Croatia*).
- the Lithuanian Parliament’s discriminatory refusal to grant the status of “State-recognised” religious association (affording privileges similar to those mentioned in the aforementioned Croatian case) to a Neo-Pagan association, even though it satisfied the legal conditions for such status. In this case, it had transpired from statements made by various MPs that the refusal had been motivated by arguments relating to the substance of the religious beliefs in question (unsubstantiated national security arguments; doubts as to the “religious” nature of the activities of the applicant association and to the very existence of the beliefs which it claimed to hold; the alleged attack on the Christian faith of the majority of the population and the interests of the Roman Catholic Church). Since those grounds were clearly incompatible with the State’s duty of neutrality and impartiality, the Court found a violation of Article 14 of the Convention (*Ancient Baltic religious association “Romuva” v. Lithuania\**).

169. The Court has also found:

- a violation of Article 11 read in the light of Article 9 – in the case of an association of Macedonian Orthodox Christians which was in canonical union with the Serbian Orthodox Church, unlike the Orthodox Church of Macedonia, which had proclaimed itself autocephalous. The applicant association submitted two requests for registration under two slightly different names, explaining that it submitted to the canonical jurisdiction of the Serbian Church. Both registration requests were rejected, essentially on formal grounds. The authorities also cited two other grounds, namely: that the applicant association had been set up by a foreign church or State, making it ineligible for registration; and that its intended names were problematic. In particular the intended names were too similar to the “Macedonian Orthodox-Ohrid Archdiocese” which had the “historical, religious, moral and substantive right” to use the name “Ohrid Archdiocese”. The Court took the view that the numerous flaws relied upon in order to refuse to register the applicant association had been neither relevant nor sufficient. The same applied to the association’s «foreign origin», because its founders had been nationals of the respondent State and the relevant legislation had not banned the registration of religious organisations answerable to a religious centre located abroad. As regards the association’s name, it had been sufficiently specific to differentiate it from other Churches. The impugned interference had therefore been disproportionate (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*);

- a violation of Article 9 read in the light of Article 11 – owing to a refusal by the Bulgarian authorities to register a new association of adherents of the *Hare Krishna* movement on the grounds that that association’s beliefs and observance were no different from those of another association which had already been registered; that their statutes and declared aims were the same; that their names were too similar; that the law prohibited the registration of two religious organisations based in the same town or city; and lastly, that the new association could be recognised as a branch of the “mother organisation” (the association already registered), but only at the latter’s express request. The Court noted that the alleged similarity of names had finally not been used as one of the main grounds of refusal, and that the other grounds had been insufficient to qualify the impugned interference as “necessary in a democratic society” (*Genov v. Bulgaria*).

170. On the other hand, the Court declared manifestly ill-founded complaints lodged by two groups of adherents of Sun Myung Moon’s Church of Unification in the Czech Republic and Bulgaria respectively:

- in the first case, which the Court considered under Article 11 read in conjunction with Article 9, the applicants complained about the Czech authorities’ refusal to register their organisation as a church with legal personality on two different grounds: firstly, the applicants’ refusal to provide the authorities with a background document explaining their teachings, and secondly the fact that they had infringed the general regulations on the collection of signatures from “persons embracing the doctrine of the Church”. Having carried out additional verifications, the authorities had rejected many of the signatures collected on the ground that they were mere sympathisers rather than believers with a theological link to the Church; the Court accepted this interpretation of the law as reasonable and non-arbitrary. However, the number of signatures remaining was below the total of 10,000 required by law in order to register a church. While accepting that this figure might seem disproportionate on the face of it, the Court noted that the new law enacted in the meantime had reduced it to 300 and that there was nothing to prevent the applicants from lodging a fresh request for the registration of their church (*Lajda and Others v. the Czech Republic* (dec.));
- in the second case, which the Court considered under Article 9, the applicants complained of an alleged implicit refusal by the Bulgarian Government to register their organisation. The Court noted that the applicants had received no formal denial of registration; they had received a letter from the Government inviting them to complement and explain the documents submitted, but had decided not to follow these instructions. In view of the circumstances of the case, the Court concluded that the Government’s attitude had pointed neither to delaying tactics nor to any implicit refusal (*Boychev and Others v. Bulgaria*).

171. As regards *refusals to re-register* a religious organisation already recognised by the State – either depriving it of legal personality or relegating it to a lower legal status – the Court prefers to consider this kind of case under Article 11 of the Convention (freedom of association) read in conjunction with Article 9. For instance, the Court found a violation of Article 11 in the following cases:

- the Russian authorities’ refusal to re-register the local branch of the Salvation Army, thus depriving it of legal personality, on grounds which the Court deemed either devoid of any legal basis in domestic law or arbitrary and unreasonable (the applicant’s “foreign origin”; the alleged insufficiency of the data on its religious affiliation; the applicant’s alleged “paramilitary” nature; its alleged intention to infringe Russian legislation, etc.) (*Moscow Branch of the Salvation Army v. Russia*, §§ 74-75);

- the Russian authorities' refusal to re-register the local branch of the Church of Scientology, rejecting at least eleven applications for re-registration on mutually contradictory and arbitrary grounds (allegedly incomplete files, with no indication of which documents were missing; request to submit originals rather than copies even though this was not a legal requirement, etc.) (*Church of Scientology of Moscow v. Russia*). In another very similar case the Court found a violation of Article 11 as a result of a refusal to re-register a local branch of the Jehovah's Witnesses (*Jehovah's Witnesses of Moscow and Others v. Russia*);
- the Macedonian authorities' refusal, after the entry into force of new legislation, to confirm the religious organisation status of a Bektashi community (a Sufi order) which had held such status for fifteen years, on purely formalistic grounds, followed by the rejection of a fresh request for registration on the grounds that its name and doctrinal sources were identical to those of another religious organisation which was already registered, which was liable to cause confusion among believers (*Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*);
- a legislative change under which some of the religious organisations previously recognised in Hungary as "churches" were relegated to the status of "associations", a much lower status affording far fewer advantages in terms of rights and privileges (*Magyar Keresztény Mennonita Egyház and Others v. Hungary*).

172. Article 9 § 1 of the Convention does not go so far as to require Contracting States to grant *religious marriages* equal status and equal legal consequences to civil marriage (*X. v. Germany*, Commission decision of 18 December 1974; *Khan v. the United Kingdom*, Commission decision; *Spetz and Others v. Sweden*, Commission decision; *Serif v. Greece*, § 50; *Şerife Yiğit v. Turkey* [GC], § 102). Moreover, Article 9 does not cover the modalities of religious marriage, in the sense that it depends entirely on each particular religion to decide on such modalities. In particular, it is up to each religion to decide whether and the extent to which they permit same-sex unions (*Parry v. the United Kingdom* (dec.)). Nor is it contrary to Article 9 if the State requires the *banns* to be published under civil law and refuses to recognise the validity of religious publication of the banns in the framework of an employment-related problem (*Von Pelser v. Italy*, Commission decision).

173. The Commission dismissed a complaint from a Belgian national concerning the fact that the Belgian system of combining the spouses' incomes for tax purposes worked to the disadvantage of married couples; according to the applicant, couples under whose religion marriage was a holy sacrament were unable to evade the negative tax consequences of marriage by cohabiting. The Commission found no infringement of the applicant's freedom of religion, considering that it was artificial to compare the situation of a married couple with that of a cohabiting couple by concentrating solely, as the applicant was doing, on the field of income tax and thus overlooking the other rights and obligations arising out of marriage for the spouses, whether in professional or moral terms (*Hubaux v. Belgium*, Commission decision).

174. The State is not required to recognise decisions taken by *religious courts* under the national legal system (*Serif v. Greece*, § 50).

175. Furthermore, the right to manifest religion in "teaching" does not go so far as to entail an obligation on States to allow *religious education in public schools* (*Savez crkava "Riječ života" and Others v. Croatia*, § 57). Nevertheless, if the State decides to grant this kind of privilege to certain religious communities, the special rights and privileges fall within the scope of Article 9, such that the prohibition of discrimination enshrined in Article 14 of the Convention becomes applicable (*ibid.*, § 58).

176. Moreover, if, under domestic law, the ministers of certain denominations are authorised to perform marriages having legal effects in civil law or to adjudicate on certain civil-law dispute (for example in family and inheritance matters), the State has a legitimate interest in taking special

measures to protect from deceit those whose legal relationships can be affected by the acts of religious ministers (*Serif v. Greece*, § 50).

### 3. Use by the State of derogatory terms against a religious community

177. The use in official documents of pejorative expressions against a religious community can amount to interference with the rights secured under Article 9 inasmuch as it is liable to have negative consequences for the exercise of freedom of religion (*Leela Förderkreis e.V. and Others v. Germany*, § 84).

178. The Commission declared inadmissible applications concerning the following situations:

- the competent domestic court's dismissal of a request from the applicant association to prohibit the German Federal Government from mentioning it in a governmental publication entitled "So-called youth sects and psycho-groups in the Federal Republic of Germany". The Commission noted that the applicant association's right to manifest its religion had not been infringed because the impugned publication had not had any direct repercussions on the exercise of that right. The publication had been produced for the sole purpose of informing the general public, especially since, according to the domestic courts some of the applicant association's activities – for instance the fact of advocating the replacement of medical treatment by religious belief – justified warning the public about them (*Universelles Leben e.V. v. Germany*, Commission decision);
- an article published by the Bavarian Ministry of Education in an educational magazine for the purpose of warning pupils of the alleged dangers of scientology, and the courts' refusal to grant an interim injunction against the distribution of the article. The Commission took the view that the impugned article had targeted scientology in general as a movement operating at world level, not individual adherents of that movement such as the applicants. In so far as the applicants complained of their neighbours' and the local press's negative attitude to them, there was no indication of a causal link between the impugned article and these facts; in any case, the effects of the article were too indirect and remote to have had any effect on their rights under Article 9; the complaint was therefore incompatible *ratione personae* with the Convention (*Keller v. Germany*, Commission decision).

179. The Court found no violation of Article 9 in a case in which the applicant associations devoted to the teachings of Bhagwan Shree Rajneesh (Osho) complained of the repeated use in specified official communications from the German Federal Government and its members, of the terms "sect" "youth sect", "psycho-sect", "pseudo-religion", "destructive religious movement", "movement manipulating its members", etc., with reference to those teachings. The German Federal Constitutional Court had decided that the Government was entitled to use most of the terms in issue; on the other hand, the use of the expressions "pseudo-religion" and "destructive religious movement" and the allegation of manipulation were contrary to the Constitution. Drawing on the assumption that there had been interference in the rights guaranteed by Article 9, the European Court of Human Rights held that the interference had pursued legitimate aims (public safety and the protection of public order and the rights and freedoms of others) and had been proportionate to those aims. Indeed, in the exercise of their obligation to inform the public about public-interest issues, the Federal authorities had only intended to draw citizens' attention to a phenomenon which they considered alarming, that is to say the emergence of a multitude of new religious movements and their attractiveness to young people. The only aim pursued by the authorities had been to enable people where necessary to act with full knowledge of the facts and to avoid ending up in difficulties solely because of ignorance. Furthermore, the Government's conduct had in no way prevented the applicant associations from exercising their rights as secured under Article 9 of the Convention; moreover, the German authorities had finally ceased using the impugned terms in

pursuance of the recommendations set out in an expert report (*Leela Förderkreis e.V. and Others v. Germany*).

180. On the other hand, the Court found a violation of Article 9 in the case of a woman who practised meditation in the Osho religious movement, and who had been forcibly admitted to psychiatric hospital, diagnosed with acute psychosis and kept in hospital for 52 days, during which time the doctors attempted to “correct” her beliefs by disparaging them and encouraging her to “adopt a critical attitude” to meditation and the Osho movement. The Court explicitly contrasted this case with that of *Leela Förderkreis e.V. and Others*, cited above, emphasising the applicant’s heightened state of dependency, vulnerability and powerlessness *vis-à-vis* the medical staff who were responsible for both her diagnosis and her continued confinement in the hospital. The Court found that there had been an interference with the applicant’s freedom of religion, which interference had not been “prescribed by law” (*Mockutė v. Lithuania*, §§ 107-131).

181. The Court declared inadmissible an application lodged by a group of Jehovah’s Witnesses complaining that the French Government had infringed their right to freedom of religion by granting public-interest status to an association known as the “National Union of Associations for the Defence of Families and the Individual” (UNADFI), which pursues the aim of “combating infringements of human rights and fundamental freedoms” committed by “destructive sects”, which association the applicants accused of being openly hostile to their religious community. The Court considered that the State could not be held responsible for all the actions of associations to which, having regard to their statutes, it had granted public-interest status. The fact of granting such status did not effect any transfer of public power, for which transfer the Convention ascribes sole responsibility to the State. Although the applicants considered that the actions of the UNADFI had infringed their rights, such allegations should have been dealt with under the corresponding remedies before the competent domestic courts. The Court ultimately decided that the applicants could not claim to be “victims” of the alleged violation and that their complaints fell outside its jurisdiction *ratione personae* (*Gluchowski and Others v. France* (dec.)).

#### 4. Financial and tax measures

182. There is no joint standard at the European level in the field of financing and taxing churches or religious communities, as such matters are closely linked to the history and traditions of each individual country. States therefore benefit from a particularly wide margin of appreciation in this sphere (*Alujer Fernández and Caballero García v. Spain* (dec.)).

183. A religious organisation cannot rely on Article 9 of the Convention in order to demand special tax status on the pretext of religious freedom (*Association Sivananda de Yoga Vedanta v. France*, Commission decision). That being the case, freedom of religion does not entail churches or their members being given a different tax status to that of other taxpayers (*Alujer Fernández and Caballero García v. Spain* (dec.)). Furthermore, Article 9 cannot be interpreted as granting a right to tax exemption in respect of used for worship (*Iglesia Bautista “El Salvador” and Ortega Moratilla v. Spain*, Commission decision). However, an economic, financial or fiscal measure taken against a religious organisation can sometimes constitute an interference with the exercise of rights secured under Article 9 of the Convention inasmuch as it is demonstrate that it creates a real and serious obstacle to the exercise of those rights. In particular, under certain circumstances, matters relating to the upkeep and use of religious buildings, including expenses incurred owing to the taxation status of those buildings, are liable to have major repercussions on the exercise of the right of members of religious groups to manifest their religious beliefs (*The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, § 30; *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*, § 41).

184. For example, the Court found a violation of Article 9 in the following cases:

- taxation of individual donations received by the *Association des Témoins de Jéhovah de France*, accompanied by default interest and surcharges, making the applicant association



subject to the standard tax system for associations and excluding it from the tax benefits reserved for certain other associations, including religious ones. The impugned measure, which covered all the individual donations received by the applicant association, totalling 90% of its resources, had the effect of cutting off the association's vital resources, thus preventing it from guaranteeing its adherents' freedom to exercise their religious beliefs. The Court did not consider that the interference complained of met the legality requirement because of the very vague wording of the Article of the General Taxation Code which had been applied (*Association Les Témoins de Jéhovah v. France*; see also, for a very similar case with the same outcome, *Église Évangélique Missionnaire and Salaûn v. France*);

- taxation of individual donations received by two associations intended for the Aumist community and the building of temples in the Mandarom monastery. Prior to the tax adjustment the two association had decided to disband and to transmit all their assets to an association pursuing very similar aims so that it could continue the public activities of the sect in question; the tax authorities then instituted proceedings with the competent court and obtained the cancellation of the financial transfer. The Court acknowledged that since the impugned measure targeted the observance and the place of worship of the religion in question, it amounted to an interference with the exercise of the rights protected by Article 9 of the Convention; the Court found a violation on the same grounds as in the case of *Association Les Témoins de Jéhovah v. France* (*Association Cultuelle du Temple Pyramide v. France*; *Association des Chevaliers du Lotus d'Or v. France*).

185. On the other hand, the Court declared inadmissible an application which was similar to those mentioned above apart from the fact that, although the applicant association operated partly on the basis of individual donations, the taxation of the latter had not had the effect of cutting off the association's vital resources or of impeding its religious activities (*Sukyo Mahikari France v. France* (dec.), § 20).

186. The Court found a violation of Article 14 of the Convention (prohibition of discrimination) in conjunction with Article 9 in the following cases:

- a refusal to exempt the Jehovah's Witnesses community from payment of inheritance and gift tax on the ground that under domestic law such exemption could only be granted to "recognised religious society" and not to "registered religious organisations" such as the applicant community (*Jehovas Zeugen in Österreich v. Austria*; *İzzettin Doğan and Others v. Turkey* [GC]);
- a refusal by the Turkish Directorate of Religious Affairs to pay the electricity bills for an Alevi religious centre housing a cemevi (an Alevi place of worship) in the same way as it paid energy bills for mosques, churches and synagogues. This refusal was based on the non-recognition of a cemevi as a "place of worship", which was in turn the result of the Turkish authorities' refusal to consider Alevism as a separate religion rather than as a branch of Islam. The Court held that this differential treatment had no objective and reasonable justification (*Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfı v. Turkey*).

187. On the other hand, the Court found no violation of Article 14 in conjunction with Article 9 as regards a refusal by the United Kingdom authorities to grant a Mormon Temple (which is closed to the public and accessible only to Mormons who hold a current "recommend") total exemption from specified taxes, even though they grant such exemption to Mormon chapels and "stake centres", which are open to the public. The Court voiced doubts as to whether the dispute fell within the ambit of Article 9. However, even supposing that that provision was applicable, the alleged differential treatment did have an objective and reasonable justification: it was based on the idea that access by the general public to religious ceremonies was beneficial to society as a whole because it could dispel suspicions and help break down prejudice in a multi-faith society. Furthermore, the Mormon Church was not treated any differently from the other religious



communities, including the official Anglican Church, whose private chapels were subject to the same tax law as Mormon Temples. Moreover, as a place of worship the Temple in question nonetheless benefited from an 80% reduction in rates (*The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*).

188. By the same token the organs of the Convention dismissed complaints concerning the following situations:

- a refusal by the Spanish tax authorities to exempt an evangelical protestant church from land tax appertaining to its place of worship, even though the Roman Catholic Church did benefit from such exemption. The Commission found no appearance of discrimination in this case, because the tax exemptions enjoyed by the Roman Catholic Church had been provided for by the agreements concluded by the respondent State and the Holy See, which imposed mutual obligations on both parties. On the other hand, given that the applicant community had never requested the conclusion of such an agreement with the State, it did not have the same obligations as the Roman Catholic Church *vis-à-vis* the latter (*Iglesia Bautista “El Salvador” and Ortega Moratilla v. Spain*, Commission decision);
- the fact of imposing corporate tax on the applicant association, which was involved in the teaching of yoga, on the ground that it provided yoga lessons on a profit-making basis. Furthermore, the Commission rejected the applicant association’s allegation that it had suffered discrimination as compared with the religious activities of other communities, particularly those of the Roman Catholic Church, whose non-profit status was recognised by the State. Lacking religious association status the applicant association was not in an analogous or even a comparable situation to that of religious associations (*Association Sivananda de Yoga Vedanta v. France*, Commission decision);
- a decision by the German authorities and courts to place the donation which had been given to the applicant, an Islamic association, by the Party of Democratic Socialism under the regime of the former German Democratic Republic (GDR), under the administration of the Trust Agency, and the seizure of the corresponding assets. The Court noted that the impugned measure had been ordered under exceptional circumstances related to German reunification; more specifically, the measure had been implemented under the general regulations introduced in the GDR during the pre-reunification period with a view to checking the provenance of assets belonging to political parties and related organisations. Having found that the impugned interference was in conformity with Article 1 of Protocol No. 1 (protection of property), the Court reached the same conclusion as regards Article 9. It voiced doubts as to the existence of an interference with the exercise of freedom of religion because the impugned measure had concerned neither the internal organisation of the applicant association nor its official recognition by the State. In any case the said measure had been prescribed by law, had pursued the legitimate aims of protecting public morals and the rights and liberties of others, and had not been disproportionate to those aims (*Islamische Religionsgemeinschaft in Berlin e.V. v. Germany* (dec.)).

189. Some European States have a *religious tax* (church tax, denominational tax, etc.), levied either by the State, which then transfers it to specific religious organisations, or directly by religious organisations, which can enforce payment under proceedings in the national courts. In other States taxpayers may legally allocate a certain proportion of their income tax to a specified religious organisation. The existence of such a religious tax does not in itself raise any issues under Article 9 of the Convention, as the State’s right to levy such a tax is one of the “legitimate aims” mentioned in Article 9 § 2 (*Wasmuth v. Germany*, § 55; *Klein and Others v. Germany*, § 89). Moreover, Article 1 of Protocol No. 1 on the protection of property explicitly empowers the State to levy taxes (*C. v. the United Kingdom*, Commission decision). Nevertheless, the wide margin of appreciation granted to States in matters of church tax does not mean that no freedom of religion issues can ever arise in this sphere. On the contrary, the Court has stated that there may be situations in which an

interference linked to the church tax system is significant and where the exercise of balancing the competing interests may lead it to find a violation (*Wasmuth v. Germany*, § 61).

190. The levying by a Church, with State assistance, of contributions payable by its members does not, as such, interfere with the activities listed in Article 9 § 1 (“worship, teaching, practice and observance”). The situation of the members of a religious organisation in this connection is comparable to the obligation to contribute to a private association of which one is a member, and Article 9 cannot be interpreted as conferring on the individual the right to remain a member of a Church and yet to be exempted from the legal, and particularly the financial, obligations stemming from such membership in accordance with the autonomous regulations of the Church in question (*E. and G.R. v. Austria*, Commission decision).

191. Clearly, as a general rule, even though the State may levy a church tax or a similar contribution for a Church, such measure *can only cover the latter’s membership*. Accordingly, there will be an interference with the negative aspect of freedom of religion when the State brings about a situation in which individuals are obliged – directly or indirectly – to contribute to a religious organisation of which they are not a member (*Klein and Others v. Germany*, § 81).

192. For example, the Court found that there had been an interference in the case of a man who did not belong to his wife’s church and whose tax reimbursement had been reduced by the tax authorities; the amount had been directly deducted, by way of an offset, from the amount of a special Church tax owed by his wife. In other words, he had been made subject to his wife’s financial obligations to a Church to which he himself did not belong (*Klein and Others v. Germany*, §§ 81-83). However, that interference had been justified for the purposes of Article 9 § 2 of the Convention because, first of all, the impugned offsetting had occurred because the couple themselves had voluntarily opted for submitting a joint tax declaration, and secondly, the applicant could have changed his option by applying for a settlement notice. In those circumstances, the offset had been a proportional means for the State to settle the couple’s tax debts.

193. Requiring a tax-payer to pay the church tax for a Church to which he or she does not belong may also be justified in exceptional cases where the Church in question performs certain public-service functions which are by nature non-religious and where the tax in question is used only for financing said non-religious functions:

- the Commission found a violation of Article 9 of the Convention in a case where the applicant, who worked in Sweden but who did hold legal Swedish “resident” status, had been required to pay church tax for the Church of Sweden (a Lutheran church which held State Church status at the time) to which he did not belong, without any possibility of exemption (*Darby v. Sweden*, Commission’s report, §§ 57-60). However, when the case reached the Court, the latter decided to consider it in the light not of Article 9 but of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1 (discrimination between residents and non-residents in the exercise of their right to protection of property), of which it found a violation (*Darby v. Sweden*, §§ 34-35);
- the Court declared manifestly ill-founded a complaint lodged by a Swedish national who was not a member of the Church of Sweden but nonetheless had to pay it a “dissenting tax” corresponding to 25% of the standard church tax. The Court noted that the contribution demanded of the applicant in this case was intended to fund non-religious work carried out by the Church of Sweden in the interests of the whole population, such as organising funerals, looking after elderly persons and managing the national architectural heritage; furthermore, the figure of 25% was not arbitrary but had been calculated on the basis of the percentage of the cost of such activities within the Church’s overall economy (*Bruno v. Sweden* (dec.); *Lundberg v. Sweden* (dec.)).

194. All the cases cited above concerned *natural persons*. However, an exclusively profit-making *commercial company* cannot, even if it has been set up and is run by a philosophical association,

cannot rely upon Article 9 in order to avoid paying the church tax levied on the basis of a law applicable to all commercial companies (*Company X. v. Switzerland*, Commission decision; *Kustannus OY Vapaa Ajattelija AB and Others v. Finland*, Commission decision).

195. Therefore, church tax is not in itself contrary to freedom of religion where domestic law allows the individual to *leave the church concerned* if he so wishes (*Klein and Others v. Germany*, § 113). Nevertheless, the domestic authorities have a wide discretion to decide on what conditions an individual may validly be regarded as having decided to leave a religious denomination; they can therefore demand a clear, unequivocal expression of the person's wishes in that regard (*Gottesmann v. Switzerland*, Commission decision).

196. The organs of the Convention found no appearance of a violation of Article 9 (alone or in conjunction with Article 14 prohibiting discrimination) in the following cases:

- the implementation in respect of the applicants, a Roman Catholic couple, of the Austrian system of church contributions requiring them pay regular contributions to the Roman Catholic Church; in the event of non-payment that Church was entitled to institute civil proceedings against them for payment of the amounts in question. The Commission noted that the obligation in issue could be obviated if the applicants left the Church; by explicitly providing for such a possibility in legislation the State had created sufficient safeguards to guarantee the applicants' exercise of their freedom of religion; on the other hand the applicants could not derive from Article 9 of the Convention any "right" to retain their membership of the Roman Catholic Church while also being exempted from the obligations imposed by the latter. Furthermore, the fact that the State places its civil courts at the disposal of the Churches, on the same basis as any other entity or person, to secure the enforcement of an obligation does raise no issues as regards the right to protection of property secured under Article 1 of Protocol No. 1 (*E. and G.R. v. Austria*, Commission decision);
- the obligation imposed on the applicants by the Swiss authorities to pay retroactively a church tax liable by dint of their belonging to the Roman Catholic Church for a period when, in their submission, they had no longer been members of that Church. In fact the national authorities had only recognised their withdrawal from the Church from the time each of them had explicitly and clearly expressed their wish no longer to belong to it, arguing that the mere fact of crossing out the space for religious details on their tax returns was insufficient for the purpose (*Gottesmann v. Switzerland*, Commission decision);
- the case of four applicants complaining of the fact that the German tax authorities calculated and levied Church taxes or fees on the joint basis of their income and that of their respective spouses. They complained in particular about the need to call on the financial assistance of their spouses in order to pay the special Church fees, placing the adherent wishing to exercise his or her freedom of religion in a situation of dependence on his or her spouse, as well as the obligation to pay an Church tax which was unfairly high because the basis on which it was calculated included the spouse's income. The impugned taxes and fees had been calculated and levied by the individual Churches, and not by the State; it was therefore an autonomous activity on the part of each of the Churches, which could not be attributed to the German State. Moreover, the applicants were free to leave their Church under domestic law (*Klein and Others v. Germany*, §§ 113-118 and 129-134);
- the choice given to the applicants, a group of Spanish evangelical protestants, between allocating a certain proportion of their income tax either to financially supporting the Roman Catholic Church or to other activities in the public interest, but not to their own Church. The Court noted that the religious community to which the applicants belonged had not attempted to conclude an agreement with the Spanish State enabling the tax to be used as they wished, despite the fact that domestic law allowed for that option. The special

fiscal advantages granted to the Roman Catholic Church was based on agreements entered into by the respondent State and the Holy See, which imposed mutual obligations on both parties, for instance requiring the Church to place its historic, artistic and documentary heritage at the service of Spanish society as a whole (*Alujer Fernández and Caballero García v. Spain* (dec.));

- the facility for Italian taxpayers to allocate eight thousandths of their income tax to the State, the Roman Catholic Church or one of the institutions representing the other five religions which had agreed to accept such a subsidy on concluding a special agreement with the State. Contrary to the applicant's contentions, the Court found that the law also gave taxpayers the option of refraining from making any such choice, such that the impugned provision did not entail an obligation to manifest one's religious beliefs (*Spampinato v. Italy* (dec.));
- national legislation which entitled the members of *all* legally recognised religious communities to allocate a proportion of their tax to their respective community, but also granted specified annual amounts from the State budget exclusively to the national Church (the Lutheran Church of Iceland), whose ministers hold civil servant status (*Ásatrúarfélagið v. Iceland* (dec.)).

197. It should be noted that the aforementioned cases concerned either a specific church tax or the voluntary allocation by taxpayers of a specific proportion of the general tax which they paid to the tax authorities. However, Article 9 of the Convention does not grant the taxpayer any rights *vis-à-vis* the *State's general fiscal and budgetary policy* where there is no direct, traceable link between the payment of a specified amount and its subsequent utilisation. Consequently, the Commission dismissed a complaint from a pacifist Quaker who had refused to pay a certain percentage of his tax unless he could be sure it would not be allocated to financing the military sector. The Commission took the view that the obligation to pay tax was an obligation of a general nature which had no specific impact as such in terms of conscientious objection; its neutrality was illustrated by the fact that taxpayers could not influence the allocation of their taxes or decide on such allocation once the taxes had been levied (*C. v. the United Kingdom*, Commission decision, as confirmed in *H. and B. v. the United Kingdom*, Commission decision). The Commission reached the same conclusion in the case of a French lawyer who was opposed to abortion and who demanded the right not to pay a specific proportion of tax which was used to fund abortions (*Bouessel du Bourg v. France*, Commission decision).

198. The Commission subsequently specified that there was no appearance of an infringement of freedom of religion even where a State used the budgetary appropriations obtained through general taxation to support specific religious communities or their religious activities (*Darby v. Sweden*, Commission's report, § 56).

199. As regards *compulsory insurance and social security*, in the 1960s the Commission dealt with several applications from Dutch reformed Protestants who were demanding the right, relying on Article 9, not to take out various types of compulsory insurance and not to be affiliated to certain bodies or mechanisms set up by the State. They argued as follows: first of all, God sends both prosperity and adversity to mankind and it is therefore forbidden to attempt to prevent or limit in advance the effects of possible misfortune. Secondly, in the Bible God orders all Christians to provide sustenance to the elderly and infirm; that being the case, by taking over this matter and setting up a State old-age pension system, the authorities had breached God's express commandment, and the applicants refused to be associated with this sin. In this category of cases the Commission dismissed the following complaints:

- a complaint from a milk dealer concerning penalties imposed on him owing to his refusal to join the health insurance scheme, which is a legal precondition for stockbreeding; even supposing that there had been an interference with the exercise of the rights secured

under Article 9, it had been “necessary in a democratic society” for the purposes of protecting “public health”, which aim could reasonably include the prevention of livestock diseases (*X. v. the Netherlands*, Commission decision of 14 December 1962);

- a complaint from a Reformed Church and two of its representatives who, although they were not opposed to all forms of insurance, nonetheless wished to be exempted from the obligation to contribute to the old-age pension scheme. The Commission noted that Netherlands law exempted conscientious objectors from contributing directly to the scheme, replacing such contributions with equivalent payments in the form of taxes. The national legislature had therefore taken sufficient account of the specific interests of the Reformed Church and there had been no appearance of a violation of Article 9 in that case (*Reformed Church of X. v. the Netherlands*, Commission decision);
- a complaint from a man alleging discrimination because Netherlands legislation only exempted from compulsory contribution to the old-age pension scheme (while requiring those concerned to pay equivalent amounts in the form of taxes) persons who, for religious reasons, were strictly opposed to *all* forms of insurance, which did not apply to the applicant (*X. v. the Netherlands*, Commission decision of 14 December 1965);
- a complaint from a shopkeeper opposed to *all* forms of insurance who had been sentenced to a fine and the confiscation of his professional vehicle for driving it without the compulsory civil-liability insurance. The applicant acknowledged that he was eligible for the exemption prescribed by law, but since he would in any case be paying equivalent sums in the form of taxes, he considered this option as morally unacceptable. The Commission found that the interference complained of was “necessary in a democratic society” for the protection “of the rights of others”, that is to say of third persons liable to the victims of potential accidents (*X. v. the Netherlands*, Commission decision of 31 May 1967).

200. Somewhat more recently, the Commission also dismissed a similar application lodged by a Dutch doctor, who was a general medical practitioner following anthroposophical principles, demanding the right not to be affiliated to a professional pension scheme as required by law. The Commission found that the obligation of affiliation to a pension scheme applied to all general practitioners on a completely neutral basis and could not be said to be closely linked in any way with the applicant’s religion or beliefs (*V. v. the Netherlands*, Commission decision).

201. The Court found that there was no appearance of a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9 in a case where the a health insurance fund required the leaders of a Christian-based association “geared to working towards full human self-development through art and beauty” to subscribe to the general social security system on the grounds that their activities, for which the association defrayed all the relevant costs, were “paid” rather than “voluntary”, in legal terms. The applicant association considered that it had suffered discriminatory treatment as compared with the ministers of religious denominations whose religious activities did not come under the general social security system, and also as compared with other voluntary workers in the federation to which the applicant association belonged. The Court found that under French law monks and nuns were subject to the general social security system, while retaining the possibility of being admitted to a special scheme; however, when taking part in activities extraneous to their religious training they were subject to the general social security system (*Office culturel de Cluny v. France* (dec.)).

## 5. Measures taken against religiously inspired political parties

202. Article 9 neither prohibits the subsidising of political parties nor confers the right to stand in elections as a political party (*X., Y. and Z. v. Germany*, Commission decision).

203. The Court has never held that the setting up of a *political party inspired by the postulates of a religion* is a form of “manifestation of religion” protected by Article 9 of the Convention. On the



other hand, it has dealt with applications lodged by such parties complaining of measures taken against them by States. In this regard the Court has found that a political party can 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 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. Provided that it satisfies these conditions, a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC]; *Staatkundig Gereformeerde Partij v. the Netherlands* (dec.), § 71). On the other hand, any Contracting State may legitimately prevent the application within its jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], § 128).

204. For example, the Court found:

- no violation of Article 11 of the Convention (freedom of association) in a case of the dissolution of a Turkish political party and the temporary prohibition banning leaders from holding similar office in any other political party. The Court noted that the party in question was endeavouring to establish a political system based on Islamic law (sharia) (which would be incompatible with democracy) and a plurality of legal systems permitting discrimination based on the gender of the parties concerned, as in polygamy and privileges for the male sex in matters of divorce and succession (which would be contrary to sex equality, one of the fundamental values protected by the Convention) (*Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], § 128);
- the inadmissibility on grounds of incompatibility *ratione materiae* with the Convention of an application lodged by a “global Islamic political party” complaining of the prohibition by the relevant German authorities of its activities in Germany. The Court considered that since it called for the violent destruction of the State of Israel and for the banishment and killing of its inhabitants, this party could not rely on the protection of Articles 9, 10 and 11, in pursuance of Article 17 of the Convention (prohibition of abuse of rights) (*Hizb Ut-Tahrir and Others v. Germany* (dec.));
- the inadmissibility as manifestly ill-founded of an application lodged by the Dutch Reformed Protestant Party complaining about a judgment delivered by the Netherlands Supreme Court to the effect that the State should take (unspecified) action to terminate the said party's practice of not admitting women to its governing bodies or on to its lists of candidates for elections, that practice being motivated by a sincere belief based on certain passages of the Bible. The Court considered the application under Articles 9, 10 and 11 of the Convention without distinction. Leaving aside the question whether the applicant party could consider itself as a “victim” before any specific action had been taken against it, the Court declared that the party's position on the role of women in politics blatantly contradicted the fundamental values of the Convention. The Court did not consider decisive the fact that no woman had ever expressed a wish to stand as a candidate for the applicant party (*Staatkundig Gereformeerde Partij v. the Netherlands* (dec.)).

## B. Negative obligations: respect for the autonomy of religious organisations

### 1. Principle of the autonomy of religious organisations

205. Religious communities have traditionally and universally existed in the form of organised structures. In cases concerning the mode of organisation of the religious community in question, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Regarded from this angle, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. The *autonomous existence of religious communities* is indispensable for pluralism in a democratic society and is therefore an issue at the very heart of the protection which Article 9 affords. 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 (*Hassan and Tchaouch v. Bulgaria* [GC], §§ 62 and 91; *Fernández Martínez v. Spain* [GC], § 127). The *internal structure* of a religious organisation and the regulations governing its membership must be seen as a means by which such organisations are able to express their beliefs and maintain their religious traditions (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 150).

206. The above-mentioned autonomy principle means that the State cannot oblige a religious community to admit new members or exclude existing members. Religious associations must be completely free to determine at their own discretion the manner in which new members are admitted and existing members excluded (*Svyato-Mykhaylivska Parafiya v. Ukraine*, §§ 146 and 150).

207. When conducting their activities, religious communities 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 particular manifestation of one's religion, protected by Article 9 of the Convention (*Hassan and Tchaouch v. Bulgaria* [GC], § 62; *Miroļubovs and Others v. Latvia*, § 80).

208. For example, the Court found a violation of Article 9 as a result of measures regulating the religious life of Greek Cypriots of Orthodox faith enclaved in the "Turkish Republic of Northern Cyprus": the authorities of the latter had not approved the appointment of priests in the region even though there was only one priest left to cover the whole region (*Cyprus v. Turkey* [GC], §§ 243-246).

209. Punishing a person merely for acting as the religious leader of a group that willingly followed him – even if that fact was not recognised by the State – can hardly be considered compatible with the demands of religious pluralism in a democratic society (*Serif v. Greece*, § 51). The Court found that there had been a violation of Article 9 on the grounds that the applicant, a Greek Muslim theologian, had been convicted for having "usurped the functions of a minister of a 'known religion'" and for having "publicly worn the dress of such a minister without having the right to do so". In fact the applicant had been elected Mufti of Rodopi by fellow Muslims without recognition by the State, which had appointed someone else to the post of Mufti. He had indeed taken part in a series of religious celebrations as Mufti but had never attempted to exercise the judicial and administrative functions laid down in the State legislation on muftis and other ministers of "recognised religions" (*ibid.*). In a similar case, this time concerning the person elected as Mufti of Xanthi, the Court reached the same conclusion, pointing out that the theoretical possibility that the coexistence of two muftis might cause tension among the local residents was insufficient to legitimise the

impugned interference, because, precisely, it was incumbent on the State authorities to ensure mutual tolerance between opposing groups (*Agga v. Greece (no. 2)*; see also *Agga v. Greece (no. 3)* and *Agga v. Greece (no. 4)*).

210. In connection with the Salvation Army, whose internal structure is based on a system of ranks similar to those of the army and on the wearing of a uniform, the Court held that this situation could be seen as a legitimate manifestation of that organisation's religious beliefs. Accordingly, it could not be seriously claimed that this meant that the Salvation Army infringed the integrity or the security of the State (*Moscow Branch of the Salvation Army v. Russia*, § 92). Broadly speaking, the use of military metaphors by a religious organisation is insufficient on its own to justify restricting its activities (see, under Article 10 read in the light of Article 9, *Ibragim Ibragimov and Others v. Russia*, § 120).

## 2. State interference in intra- or inter-denominational conflicts

211. Pluralism, tolerance and broadmindedness are hallmarks of a “democratic society”. 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 people from minorities and avoids any abuse of a dominant position (*Leyla Şahin v. Turkey* [GC], § 108). 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. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. Respect for religious diversity undoubtedly represents one of the most important challenges to be faced today; for that reason, the authorities must perceive religious diversity not as a threat but as a source of enrichment (*Izzettin Doğan and Others v. Turkey* [GC], § 109).

212. 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 (*S.A.S. v. France* [GC], § 128). In a democratic society, 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. However, 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. What is at stake here is the preservation of pluralism and the proper functioning of democracy (*Metropolitan Church of Bessarabia and Others v. Moldova*, §§ 115-116).

213. From that angle, the Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, emphasising that this role is conducive to public order, religious harmony and tolerance in a democratic society (*Bayatyan v. Armenia* [GC], § 120; *S.A.S. v. France* [GC], § 127). That applies both to relations between believers and non-believers and to relations between the adherents of various religions, faiths and beliefs (*Lautsi and Others v. Italy* [GC], § 60).

214. This duty of neutrality cannot be conceived as being likely to diminish the role of a faith or a Church with which the population of a specific country has historically and culturally been associated (*Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, § 132). Indeed, the decision whether or not to perpetuate a tradition falls, in principle, within the margin of appreciation of the respondent State. The Court must also take into account the fact that Europe is marked by a great diversity between its component States, particularly in the sphere of cultural and historical development. However, the reference to tradition cannot relieve a Contracting State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols (*Lautsi and Others v. Italy* [GC], § 68). Accordingly, the Court was unable to accept that the existence of a

religion to which the majority of the population adhered, or any alleged tension between the majority religion and the followers of a minority religion, or the opposition of an authority of the majority religion, could constitute objective and reasonable justification for infringing the rights secured under Article 9 – for example by denying a religious association State recognition (*Ancient Baltic religious association “Romuva” v. Lithuania\**, § 145).

215. The State’s duty of neutrality and impartiality is incompatible with any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (*Manoussakis and Others v. Greece*, § 47; *Bayatyan v. Armenia* [GC], § 120; *Ancient Baltic religious association “Romuva” v. Lithuania\**, §§ 125 and 140). Similarly, where domestic law makes the exercise of the right to freedom of religion or of one of its aspects subject to a system of prior authorisation, interfering in the procedure for granting authorisation of a recognised ecclesiastical authority – especially one belonging to a different denomination, hierarchy or religion – cannot be reconciled with the requirements of Article 9 § 2 (*Metropolitan Church of Bessarabia and Others v. Moldova*, §§ 117 and 123; *Vergos v. Greece*, § 34; *Ancient Baltic religious association “Romuva” v. Lithuania\**, §§ 144).

216. The duty of neutrality prevents the State, including the national courts, from deciding the question of the *religious belonging* of an individual or group, which is the sole responsibility of the supreme spiritual authorities of the religious community in question (*Miroļubovs and Others v. Latvia*, §§ 89-90; *İzzettin Doğan and Others v. Turkey* [GC], § 121). In other words, the State cannot arbitrarily “impose” or “reclassify” the religious belonging of individuals or groups against their will. Only the most serious and compelling reasons can possibly justify State intervention (*İzzettin Doğan and Others v. Turkey* [GC], § 110). For example, the Court found a violation of Article 9 in the following cases:

- a decision taken by the Latvian Directorate of Religious Affairs in the framework of a bitter dispute in the local Old-Orthodox community (adherents of the Russian Old-Orthodox Church); the decision, which had been adopted on the basis of two opinions provided by experts, none of whom belonged to the Old-Orthodox religion, stated that by taking communion with a priest of the Russian Orthodox Church the applicants had *ipso facto* changed denomination. The implementation of that decision led to the applicants’ expulsion from their place of worship (*Miroļubovs and Others v. Latvia*, §§ 33-36 and 88-89);
- the applicant’s inability to secure the replacement of the “Islam” entry on his identity card with the word “Alevi”, because the State authority responsible for matters relating to the Muslim religion considered that the Alevi religion was only a branch of Islam (*Sinan Işık v. Turkey*, §§ 45-46).

217. Furthermore, the Court found a violation of Article 9 read alone and in conjunction with Article 14 of the Convention owing to the rejection by the Turkish Government of a petition from a group of followers of the Alevi faith demanding to be treated on an equal footing with adherents of the Sunni branch of Islam. They requested in particular that Alevi community be provided with religious services in the form of a public service; that the *cemevis* (the places where Alevis practise their religious ceremony, the *cem*) be granted the status of places of worship; that Alevi religious leaders be recruited as civil servants; and that State subsidies be made available to their community. That rejection had been mainly based on the refusal to see the Alevi denomination as a separate religion or cult (and its continued formal classification as one of the Sufi orders that had been banned in the 1920s). The Court took the view that the authorities’ attitude in refusing to take the specific features of Alevism into account had infringed their obligation of neutrality and impartiality. The existence of an internal debate within the Alevi community concerning the basic rules on its beliefs and demands did not alter the fact that Alevism was a religious community which had deep roots in Turkish history and culture and had rights protected by Article 9 of the Convention. In addition to the refusal to

recognise the *cemevis* as places of worship, the absence of a clear legal framework governing unrecognised religious minorities (such as the Alevi faith) caused numerous legal, organisational and financial problems relating to the ability to build places of worship, to receive donations or subsidies, to appear in court in their own right, etc. the Turkish authorities had therefore overstepped their extensive margin of appreciation. The Court also found that the applicants had suffered discrimination as compared with the followers of the majority version of Sunni Islam, who benefited from the aforementioned rights and services (*Izzettin Doğan and Others v. Turkey* [GC]).

218. Similarly, the Court found a violation of Article 11 read in the light of Article 9 of the Convention owing to the Macedonian authorities' refusal to register a Bektashi Sufi order which had already been recognised as a legal entity for fifteen years, on the grounds that its doctrinal sources and fundamental precepts were the same as those of the general Islamic community (*Bektashi Community and Others v. the former Yugoslav Republic of Macedonia*).

219. 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 likewise constitute an interference with freedom of religion. It is true that in some countries the independence and unity of the historically dominant majority Church are matters of the utmost importance for society in general (*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia*). However, in democratic societies the State does not need to take measures to promote one interpretation of religion to the detriment of others or to force a divided religious community or a part thereof to merge under a unified leadership (*Hassan and Tchaouch v. Bulgaria* [GC], § 78; *Metropolitan Church of Bessarabia and Others v. Moldova*, § 117). When a group of adherents and/or ministers of religion splits off from the community to which they previously belonged, or even decides to change denomination, such an act is an instance of collective exercise of the "freedom to change religion or belief", which is expressly guaranteed by Article 9 § 1 of the Convention (*Miroļubovs and Others v. Latvia*, § 93). Consequently, the domestic authorities could not require believers to observe their precepts in the framework of an already recognised or registered organisation on the grounds that, in those authorities' opinion, their beliefs were identical to those of the latter organisation (*Genov v. Bulgaria*, § 46). The role of the State authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other, even where both they originated from the same group (*Metropolitan Church of Bessarabia and Others v. Moldova*, § 123).

220. The State's role as the ultimate guarantor of religious pluralism may sometimes require it to mediate between opposing parties; neutral *mediation* between groups of believers would not, in principle, amount to State interference with the believers' rights under Article 9 of the Convention, although the State authorities must exercise caution in this particularly delicate area (*Supreme Holy Council of the Muslim Community v. Bulgaria*, § 80). At all events, any decision taken by the State authorities in this sphere must be based on an acceptable assessment of the relevant facts (*Svyato-Mykhaylivska Parafiya v. Ukraine*, § 138).

221. For example, the Court found a violation of Article 9 of the Convention in the following cases:

- a refusal by the Moldovan authorities to grant legal recognition to the Metropolitan Church of Bessarabia, an autonomous Orthodox Church operating under the authority of the Patriarchate of Bucharest (Romanian Orthodox Church), on the ground that such recognition would jeopardise the interests of the Metropolitan Church of Moldova, which comes under the Patriarchate of Moscow (Russian Orthodox Church) and which was already recognised by the Government. By denying recognition on the ground that the applicant Church was only a "schismatic group" *vis-à-vis* the Russian Church and declaring that the adherents of the applicant Church could manifest their religion in the other Orthodox Church recognised by the State, the Moldovan Government had failed in its duty of neutrality and impartiality (*Metropolitan Church of Bessarabia and Others v. Moldova*);



- an arbitrary refusal by the Ukrainian authorities to recognise and register changes to the statutes of an Orthodox parish as adopted by the plenary assembly of its membership, pursuant to which the parish transferred from the jurisdiction of the Russian Orthodox Church (Patriarchate of Moscow) to that of the Ukrainian Orthodox Church (Patriarchate of Kyiv). One of the main aspects of the arbitrariness noted in this case lay in the fact that the Ukrainian authorities and courts had completely ignored the internal organisation of the parish as defined in its statutes, considered as “parishioners” persons who did not hold parishioner status according to the statutes, and concluded that the plenary assembly in question was illegitimate because those persons had not attended. As the domestic courts had failed to remedy the arbitrary action of the administrative authorities, the Court found a violation of Article 9 of the Convention in conjunction with Articles 6 § 1 and 11 (*Svyato-Mykhaylivska Parafiya v. Ukraine*).

222. The case of *Miroļubovs and Others v. Latvia* concerned State interference in a dispute which had been tearing a religious community apart. However, the State can sometimes find itself involved in intra-denominational dispute which it has itself directly helped to create. In this regard we should mention three Court judgments in three similar cases against Bulgaria. All these cases must be seen in the peculiar historical and political context of this country, which had in 1989 instigated a rapid transition from the communist totalitarian regime to democracy. After 1989 the Bulgarian State pursued a policy of interfering in the internal functioning of the two largest religious communities in the country, namely the Orthodox Church and the Muslims. The Government first of all attempted to secure the replacement of the leaders of both religious organisations because of their alleged collaboration with the old communist regime; that policy immediately caused a split in each of the religious communities in question. Subsequently, after successive general elections, every new government adopted measures to try to bring together each of the two communities under the sole leadership of religious dignitaries deemed politically loyal to the ruling party, while sidelining opposing group leaders. Furthermore, under the standard administrative practice of the Bulgarian authorities, the Law on religious denominations was interpreted as prohibiting the operation of two parallel organisations belonging to the same denomination and requiring a single leadership for each denomination, such leadership being the only one recognised by the State (for a general summary of the situation, see *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §§ 68 and 127).

223. In this context, the Court found a violation of Article 9 of the Convention in all three cases, as follows:

- the Bulgarian Government’s interference in the choice of leaders of the Muslim community by recognising, without providing any reasons or explanations, the leaders of the party opposing the applicants as the sole legitimate representatives of the entire community. Although the Bulgarian Supreme Court had ruled that the Council of Ministers was required to consider the request for registration submitted by the first applicant, the Government had refused to comply with this injunction. The Court found that the impugned interference had not been “prescribed by law” in that it had been arbitrary and based on legal provisions which allowed an unfettered discretion to the executive (*Hassan and Tchaouch v. Bulgaria* [GC]);
- the fact that the national authorities had organised a Bulgarian Muslim Unification Conference in order to put an end to the aforementioned split and interfere very actively in the preparation and running of the conference, particularly where the selection of participants was concerned. The applicant in this case was the Supreme Holy Council of the Muslim Community, representing the side opposed to that of Mr Hasan and Mr Chaush and refusing to recognise the legitimacy of the conference in question. In this case the Bulgarian authorities had exerted pressure on the split Muslim community with a view to forcing it to accept a single leadership, instead of just noting the failure of the efforts at

reunification and, if necessary, continuing to act as mediators for both parties in a spirit of dialogue. The Court found that the impugned interference was “prescribed by law” and pursued a legitimate aim but was disproportionate to that aim (*Supreme Holy Council of the Muslim Community v. Bulgaria*);

- State interference in a dispute which was tearing the Bulgarian Orthodox Church apart and which the Government had itself directly fomented in 1992 by declaring invalid the election of Patriarch Maxim to lead the Church and instead appointing a temporary leadership (referred to as the “alternative Synod”). Having regard to the particular circumstances of the case the Court rejected the Government’s argument that the members of the “alternative Synod” and their adherents had been free to create and register their own Church alongside the Church led by Patriarch Maxim. The dispute had in fact concerned not the refusal to recognise a religious organisation but the interference by the State in the internal affairs of a community torn between two hierarchies, each of which considered the other as non-canonical on the basis of arguments which were, on the face of it, neither fabricated nor unreasonable. By helping one of the parties to the dispute to obtain exclusive power of representation and control over the affairs of the entire Orthodox community, sidelining the adverse party and sending in the law enforcement agencies to help expel the adherents of the applicant Synod from the places of worship which they were occupying, the Bulgarian State had failed in its obligation of neutrality (*Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*; see also *Sotirov and Others v. Bulgaria* (dec.)).

224. On the other hand, the Court found a lack of any appearance of violation of Article 9 (alone or in conjunction with Article 14 of the Convention) in a case of alleged failure to enforce a final judgment granting the Greek Catholic parish access to the cemetery which it shared with the Orthodox parish, in the context of the change of denomination effected by the former Orthodox priest and some of the parishioners, who had been converted to the Greek Catholic Church. The Court noted that the authorities had taken appropriate and reasonable measures to quell the dispute (including allocating funds to build a new Greek Catholic Church and creating a new cemetery). As regards the impugned judgment, the applicant parish had not shown the requisite diligence in ensuring its proper enforcement (*Greek Catholic Parish of Pesceana and Others v. Romania* (dec.), § 43).

225. State interference in an inter- or intra-denominational dispute must be distinguished from the mere fact of the national authorities *drawing the inevitable secular conclusions* from a pre-existing religious dispute when they themselves did not help create and in which they have not taken sides (*Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.); *Serbisch-griechisch-orientalische Kirchengemeinde zum Heiligen Sava in Wien v. Austria*, Commission decision). For instance, the Court declared inadmissible as manifestly ill-founded a complaint from a Greek Orthodox community concerning the compulsory return to the State of a church which had been placed at its disposal for over 150 years. In 1828 King Ludwig I of Bavaria had made the building available to the “Greek religious community, subject to State ownership”. In the 1970s, however, the community had broken off relations with the local Metropolis of the Patriarchate of Constantinople, to which it had previously belonged, and transferred to the jurisdiction of the “True Orthodox Church”. Following a series of suits brought by the State of Bavaria, the German courts decided that the loan of the building dating from 1828 should be considered revoked and that the church building should revert to the State for subsequent transfer to the Metropolis. The courts held that the use of the building at issue by the applicant community had become incompatible with the intentions of the original donator (King Ludwig I), who had wished to make over the church to a group genuinely representative of the local Greek Orthodox community and in communion with the Greek Orthodox Church and the Patriarchate of Constantinople; however, the applicant community had no longer satisfied those conditions. Having regard to the arguments put forward by the domestic courts, the

Court found no appearance of an interference by the national authorities in an intra-religious dispute and or of an infringement of the principle of State neutrality (*Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.)).

226. The *right to use a religious building* was also central to the case of *Miroļubovs and Others v. Latvia*, in which the applicants, adherents of the Old-Orthodox Church of Latvia, had lost the use of their church to the adverse group, the Directorate of Religious Affairs having decided that they had changed denomination *de facto* and could no longer legitimately represent the religious community in question. Finding a violation of Article 9 of the Convention, the Court was careful to draw a distinction between this case and that of *Griechische Kirchengemeinde München und Bayern e.V. v. Germany* (dec.); it emphasised that the Latvian authorities had genuinely interfered in the religious dispute instead of confining themselves to drawing the legal conclusions from it at the secular level (*Miroļubovs and Others v. Latvia*, § 94).

### 3. Disputes between religious organisations and their members (adherents and ministers of religion)

227. States are not obliged to require religious communities coming under their jurisdiction to ensure freedom of religion and expression for the adherents and ministers of the religion in question (*X. v. Denmark*, Commission decision). It is a common feature of many religions that they determine doctrinal standards of behaviour by which their followers must abide in their private lives (*Jehovah's Witnesses of Moscow and Others v. Russia*, § 118). Consequently, Article 9 of the Convention does not secure any right to dissent within a religious organisation. Respect for the autonomy of religious communities recognised by the State implies, in particular, that the State should accept the right of such communities to react, in accordance with their own rules and interests, to any dissident movements emerging within them that might pose a threat to their cohesion, image or unity. It is therefore not the task of the national authorities to act as the arbiter between religious organisations and the various dissident factions that exist or may emerge within them (*Sindicatul "Păstorul cel Bun" v. Romania* [GC], § 165; *Fernández Martínez v. Spain* [GC], § 128). Similarly, Article 9 does not guarantee to believers a right to choose the religious leaders of their community or to oppose decisions by the religious organisation regarding the election or appointment of ministers (*Kohn v. Germany* (dec.); *Sotirov and Others v. Bulgaria* (dec.)). In the event of doctrinal or organisational disagreement between a religious community and one of its members, the latter's freedom of religion is exercised by his freedom to leave the community in question (*X. v. Denmark*, Commission decision; *Miroļubovs and Others v. Latvia*, § 80).

228. Nevertheless, Article 9 § 1 cannot be interpreted as granting an individual any "right" to oblige the Church to "annul" a baptism or confirmation which he or she received in childhood (*X. v. Iceland*, Commission decision).

229. The organs of the Convention declared inadmissible the applications concerning the following cases:

- a decision by the Danish Church Ministry to instigate disciplinary proceedings against a clergyman of the Danish National (Lutheran) Church for having made the christening of children subject to an additional condition which was not required by the Church (*X. v. Denmark*, Commission decision);
- a decision by the diocesan chapter of the Swedish National (Lutheran) Church of the time, as confirmed by the Government, to declare the applicant unqualified for the post of vicar because he was opposed to the ordination of women and had failed to state his willingness to cooperate with women priests (*Karlsson v. Sweden*, Commission decision);
- an applicant, a priest in the Church of England, who objected to a decision by the Synod of the Church to ordain women (*Williamson v. the United Kingdom*, Commission decision);

- a decision by the Marriage Board of the Pentecostal Movement to revoke the applicants' right to conduct marriage ceremonies recognised by the State on the ground that they no longer belonged to the Movement in question (*Spetz and Others v. Sweden*, Commission decision);
- a former member of the Administrative Council of the Hanover Jewish community who complained about the enforcement by the German courts of a decision given by the arbitration tribunal of the Central Jewish Consistory of Germany, stating that he had forfeited his post and ordering his expulsion from the premises of the said community; in this case there had been no interference by the State because the latter had confined itself to enforcing the impugned decision, without verifying its merits, thus respecting the internal autonomy of the Jewish community (*Kohn v. Germany* (dec.)).

#### 4. Disputes between religious organisations and their employees

230. As a consequence of their autonomy, religious communities can demand a certain degree of loyalty from those working for them or representing them. It is a common feature of many religions that they determine doctrinal standards of behaviour by which their followers must abide in their private lives (*Jehovah's Witnesses of Moscow and Others v. Russia*, § 118). 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* (*Fernández Martínez v. Spain* [GC], § 131). In so doing, particular importance should be attached to the proximity between the applicant's activity and the proclamatory mission of the religious organisation in question (*Schüth v. Germany*, § 69).

231. In the specific case of *religious education teachers*, it is not unreasonable for a church or a religious community to expect particular loyalty of them 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. It can reasonably be accepted that in order to remain credible, religion must be taught by a person whose way of life and public statements are not flagrantly at odds with the religion in question, especially where the religion is supposed to govern the private life and personal beliefs of its followers (*Fernández Martínez v. Spain* [GC], §§ 137-138).

232. Moreover, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to justify any interference with its employees' competing rights, which are also protected by the Convention (particularly under Articles 8, 9, 10 and 11). In addition, the religious community in question must also show, in the light of the circumstances of the individual case, that the alleged risk is probable and substantial and that the impugned interference with the right to respect for private life does not go beyond what is necessary to eliminate that risk and serves no other purpose unrelated to the exercise of the religious community's autonomy. Neither should it affect the substance of the right in question. Accordingly, when the Court is called upon to adjudicate a conflict between a religious community's right to autonomy and another person's competing right which is also protected by the Convention, the national courts must conduct an in-depth examination of the circumstances of the case and a thorough balancing exercise between the competing interests at stake. The State is called upon to guarantee both rights, and if the protection of one leads to an interference with the other, to choose adequate means to make this interference proportionate to the aim pursued. The State has a wide margin of appreciation in such matters (*Fernández Martínez v. Spain* [GC], §§ 123 and 132).

233. When conducting the aforementioned balancing exercise, both rights should be treated as deserving equal consideration: the outcome of the application should not, in principle, vary

according to whether it was lodged with the Court under Article 9 by the religious organisation claiming to be a victim of infringement of its right to autonomy or under another article securing a competing right for another party to the dispute (*Sindicatul "Păstorul cel Bun" v. Romania* [GC], § 160).

234. 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. However, a dismissal decision based on a breach of such duty cannot only be subjected, on the basis of the employer's right of autonomy, 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 (*Schüth v. Germany*, § 69).

235. Furthermore, in the above-mentioned exercise of balancing the competing interests, the fact that an employee who has been dismissed by an ecclesiastical employer will have limited opportunities of finding another job is particularly important. This is especially true where the employer has a predominant position in a given sector of activity and enjoys certain derogations from the ordinary law, or where the dismissed employee has specific qualifications that make it difficult, if not impossible, to find a new job outside the employing church (*Fernández Martínez v. Spain* [GC], § 144); *Schüth v. Germany*, § 73).

236. For instance, the Court found a violation of the positive obligations incumbent on the respondent State under *Article 8* of the Convention (right to respect for private life) in the case of an organist and choirmaster of a German Catholic parish who had been dismissed (with due notice) on the ground that by leaving his wife and having an extramarital relationship with another woman, who was expecting his child, he had breached his obligation of loyalty to the Catholic Church, which considers such a situation as adultery and a violation of the indissolubility of marriage. The German courts having found against the applicant, the Court did not attack the substance of their decision but criticised the manner in which they had reached their conclusion. The courts had insufficiently explained why the interests of the employing Church far outweighed those of the applicant and had failed to balance the applicant's and the employer's rights in a manner compatible with the Convention. In particular, the interests of the Church had not been balanced with the applicant's right to respect for his private and family life, but exclusively with his interest in retaining his post; the matter of the proximity of the applicant's activity and the Church's proclamatory mission had not been duly considered, nor had his ability to find another post corresponding to his qualifications; the domestic courts had not duly examined the fact that the applicant had not combated the positions adopted by the Catholic Church but had rather failed to respect them in practice. Furthermore, the Court found that the applicant's acceptance of the duty of loyalty to the Catholic Church when he had signed his contract of employment could not be regarded as an unequivocal personal undertaking to live a life of abstinence in the event of separation or divorce (*Schüth v. Germany*).

237. On the other hand, the Court found no violation of Article 8 in the following cases:

- the dismissal (without due notice) of the Europe Director of the Public Relations Department of the Church of Jesus Christ of Latter-Day Saints (the Mormon Church) in Germany, after his disclosure to his superior that he was involved in an extramarital relationship. Unlike in *Schüth v. Germany*, the Court accepted the labour courts' arguments, finding that they had sufficiently demonstrated that the obligations of loyalty imposed on the applicant were acceptable as they were designed to protect the credibility of the Mormon Church in view of the seriousness of adultery in its teachings and the important public position which the applicant held in it. The German courts had also provided sufficient explanations as to why the employer had not been required first of all to impose a more lenient penalty such as a warning (*Obst v. Germany*);
- the non-renewal of the employment contract of the applicant, a secularised Catholic priest who had been dispensed from celibacy by the Holy See and was married, and who had



previously been employed as a teacher of Catholic religion and ethics in a state secondary school; this decision had been based on a memorandum from the local diocese mentioning that press coverage of his family situation and his belonging to the “Movement for Optional Celibacy” for priests had caused a “scandal” within the meaning of canon law. The Court first of all noted that a less restrictive measure for the applicant would certainly not have had the same effectiveness in terms of preserving the credibility of the Church, and secondly, that the consequences of the decision not to renew his contract did not appear to have been excessive in the circumstances of the case, having regard in particular to the fact that the applicant had knowingly placed himself in a situation that was completely in opposition to the Church’s precepts (*Fernández Martínez v. Spain* [GC]).

238. As regards the competing rights of an employee as secured under *Article 9* of the Convention, the Court found no violation of the positive obligations flowing from this provision in the case of a teacher who had been employed at a day-care centre run by the German Protestant Church and had been dismissed without due notice on the ground that she was simultaneously an active member of a community known as the “Universal Church/Brotherhood of Man”, whose teachings were considered by the Protestant Church as absolutely incompatible with its own doctrine. The domestic courts had conducted an in-depth assessment of the circumstances of the case and carried out a detailed exercise of balancing the competing interests at stake. It was in no way unreasonable for the applicant’s interest in retaining her post to have to give way to that of the Protestant Church in retaining its credibility in the eyes of the general public and the parents of the children attending the kindergarten and preventing any risk of the children being influenced by a teacher who was a member of a religious community whose teachings contradicted the precepts of the Church in question (*Siebenhaar v. Germany*).

239. As regards the *freedom of expression* of individuals employed by religious organisations, as protected by *Article 10* of the Convention, the Commission declared inadmissible an application from a doctor employed by a German Catholic hospital who had been dismissed for signing an open letter published in the press expressing an opinion on abortion contradicting the position of the Catholic Church. While acknowledging that the applicant had not waived his freedom of expression by the mere fact of accepting employment in a Catholic hospital, the Commission noted that he had freely accepted a duty of loyalty towards the Church, which had limited his freedom of expression to a certain extent. The applicant had had access, in order to protect that freedom, to the domestic courts, whose case-law had affirmed that the Churches’ right to impose their views on their employees was not unlimited and that excessive demands were unacceptable. Indeed, it was not unreasonable to suggest that the post of physician in a Catholic hospital involved exercising one of the fundamental missions of the Church and that the obligation to refrain from issuing statements on abortion which contradicted the Church’s position was not excessive in view of the cardinal importance which the Church attached to that issue (*Rommelfanger v. Germany*, Commission decision).

240. On the other hand, the Court found a violation of *Article 10* as regards the non-renewal of the work contract of a professor of legal philosophy at the Milan Catholic University of the Sacred Heart, the Holy See’s Congregation for Catholic Education having denied him its approval on the ground that some of his positions “were clearly incompatible with Catholic doctrine” – although they failed to specify those positions. The Court noted that it was not incumbent on the State authorities to assess the substance of the Congregation’s decision. However, the applicant had not been notified of the allegations of unorthodox opinions which had been levelled against him and the domestic courts had confined their assessment of the legitimacy of the impugned decision to the fact that the Law Faculty Council had noted the existence of the denial of approval. However, communicating those facts would in no way have entailed a judgment on the part of the judicial authorities regarding the compatibility between the applicant’s positions and Catholic doctrine; on the other hand it would have enabled the applicant to have cognisance of and therefore to challenge the

alleged incompatibility between the said opinions and his activities as a teacher at the Catholic University. The importance attached to the University's interest in providing teaching based on Catholic Doctrine could not go so far as to impinge on the very substance of the procedural guarantees which must be provided to the applicant under Article 10 of the Convention (*Lombardi Vallauri v. Italy*).

241. As regards possible *freedom of association* for the clergy and other ministers of religion, the Court must first of all establish whether the persons concerned are carrying out their mission in the framework of an "employment relationship" for the purposes of *Article 11* of the Convention. If so, it is the domestic courts' task to ensure that both freedom of association and the autonomy of religious communities can be observed within such communities in accordance with the applicable law, including the Convention. Where interferences with the right to freedom of association are concerned, it follows from Article 9 of the Convention that religious communities are entitled to their own opinion on any collective activities conducted by their members that might undermine their autonomy and that this opinion must in principle be respected by the national authorities. However, a mere allegation by a religious community that there is an actual or potential threat to its autonomy is not sufficient to render any interference with its members' trade-union rights compatible with the requirements of Article 11 of the Convention. It must also show, in the light of the circumstances of the individual case, that the risk alleged is real and substantial and that the impugned interference with freedom of association does not go beyond what is necessary to eliminate that risk and does not serve any other purpose unrelated to the exercise of the religious community's autonomy (*Sindicatul "Păstorul cel Bun" v. Romania* [GC], § 159).

242. In accordance with these principles, the Court found no violation of Article 11 of the Convention in the case of a refusal by the Romanian authorities to recognise and register a trade union set up by a group of priests and lay employees of the Romanian Orthodox Church because the archbishop had not given his consent and blessing. The refusal was based on the canon law and the Church's Statute which had been approved by governmental decree and incorporated into domestic law. In the light of all the evidence before it, the Court considered that notwithstanding any special features inherent in their situation and their spiritual mission, members of the clergy of the Romanian Orthodox Church fulfilled their mission in the context of an "employment relationship", and could therefore, in principle, lay claim to freedom of association within the meaning of Article 11, especially since the Romanian courts had already expressly recognised the trade union rights of members of the clergy and lay employees of the Orthodox Church. On the other hand, the Court found that the impugned interference could be deemed proportionate to the legitimate aims pursued and therefore compatible with the requirements of Article 11 § 2 of the Convention. In refusing to register the applicant union, the State was simply declining to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of neutrality. The application for registration of the trade union did not satisfy the requirements of the Church's Statute because its members had not complied with the special procedure in place for setting up such an association. Furthermore, there was nothing to stop the applicant union's members from availing themselves of their right under Article 11 of the Convention by forming an association of this kind that pursued aims compatible with the Church's Statute and did not call into question the Church's traditional hierarchical structure and decision-making procedures (*Sindicatul "Păstorul cel Bun" v. Romania* [GC]).

243. As regards the *right of access to courts* as secured under *Article 6 § 1* of the Convention, the Court declared inadmissible an application lodged by two former priests of the Czechoslovak Hussite Church who had been dismissed by decision of their diocesan council and had applied to the courts to secure recognition of the unlawfulness of the aforementioned decision and the payment of salary arrears. The Czech courts found in their favour as regards the second point (salary arrears) but not on the first (unlawfulness of decision), because the courts declined jurisdiction for reviewing the merits of a decision for which the Church held sole jurisdiction thanks to its autonomous status. The

Court found that the proceedings brought by the applicants did not concern an arguable “right” recognised under domestic law, and that the complaint was therefore incompatible *ratione materiae* (*Dudová and Duda v. the Czech Republic* (dec.)).

## C. Positive obligations

### 1. Protection against physical, verbal or symbolic attacks by third persons

244. Individuals who choose to exercise freedom to manifest their religion cannot reasonably expect to be shielded from any criticism while doing so. On the contrary, members of a religious community must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith (*Dubowska and Skup v. Poland* (dec.)). Nevertheless, the responsibility of the State may be engaged where religious beliefs are opposed or denied in a manner which inhibits those who hold such beliefs from exercising their freedom to hold or express them. In such cases the State may be called upon to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of those beliefs (*Church of Scientology and Others v. Sweden*, Commission decision; *Begheluri v. Georgia*, § 160). Indeed, there may be certain positive obligations on the part of a State inherent in an effective respect for rights guaranteed under Article 9 of the Convention, which may involve the adoption of measures designed to secure respect for freedom of religion even in the sphere of the relations of individuals between themselves. Such measures may, in certain circumstances, constitute a legal means of ensuring that an individual will not be disturbed in his worship by the activities of others (*Dubowska and Skup v. Poland* (dec.)).

245. When a group of individuals organises a public demonstration intended to demonstrate their opposition to the beliefs or practices of a given religious community, two fundamental rights come into conflict: the demonstrators’ right to freedom of expression and of peaceful assembly (Articles 10 and 11 of the Convention), and the right of the religious community peacefully to manifest its faith without unjustified outside interference. All these rights benefit from equal protection under the Convention; none of them is absolute, and their exercise may be subject to the restrictions set out in the second paragraphs of the above-mentioned articles. The Convention does not create any hierarchy among these rights *a priori*: in principle, they deserve equal respect. Consequently, they must be balanced against each other in such a way as to respect their importance in a society based on pluralism, tolerance and broadmindedness. In so doing the State must comply with the following three principles:

1. as far as is reasonably possible, the State must ensure that the two competing rights are protected; this obligation is incumbent on the national authorities even where the acts liable to impede the free exercise of either right are instigated by private individuals;
2. accordingly, the State must ensure that an appropriate legal framework is established – particularly in order to protect the aforementioned rights against attacks by third parties – and must take effective action to ensure that the rights are respected in practice;
3. it is incumbent on the Court, in exercising its power of European review, to verify, in the light of the case as a whole, whether the national authorities have struck a fair balance among the various competing rights enshrined in the Convention. In doing so, the Court should not act with the benefit of hindsight. Nor should it simply substitute its view for that of the national authorities who, in any given case, are much better placed to assess where the appropriate balance lay and how best to achieve that balance. That is particularly true where it is the police who must in practice strike that balance. Having regard to the difficulties in policing modern societies, the positive obligations on the police or on other authorities must be interpreted in a way which does not impose an impossible or disproportionate burden on them (*Karahmed v. Bulgaria*, §§ 91-96).

246. In the same line of reasoning the Court found a violation:

- of Article 9, alone and in conjunction with Article 14 of the Convention (prohibition of discrimination), in the case of a physical assault on a peaceful meeting of Jehovah's Witnesses by a group of individuals led by a defrocked Orthodox priest, during which the applicants had been violently beaten and humiliated; their religious literature had been burnt before their eyes. The police had refused to intervene promptly *in situ* in order to protect the applicants; subsequently, the applicants had been faced with total indifference on the part of the relevant authorities, which, out of hostility towards the Jehovah's Witness religion, had refused to implement the applicable law or take any action on their complaints (*Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*; see also *Begheluri v. Georgia* and *Tsartsidze and Others v. Georgia*, which also involved acts of intimidation from the police themselves);
- of Article 9 alone (but not Article 14), in the case of a demonstration which had turned violent – but had been lawful because it had previously been declared in conformity with the law – and which had been organised by members of a political party in protest against Friday prayers held inside and outside the Mosque in Sofia, the Bulgarian capital (threatening shouts and gestures; egg-throwing; loudspeakers placed on the Mosque roof in order to drown out the call to prayer; attempted burning of prayer mats; physical assaults on members of the congregation by demonstrators having forced their way into the Mosque, etc.). In this case the Bulgarian authorities had not done all that could reasonably have been expected of them to ensure the freedom of both sides to exercise their respective rights. Being aware of the highly negative position adopted by the party in question *vis-à-vis* Islam and the Turks, the authorities could have minimised the risk of violence by allocating the demonstrators specific areas at a safe distance from the Mosque, but they had failed to do so. Furthermore, the number of police officers present on the spot was clearly insufficient to control the situation, and they behaved too passively to protect the members of the congregation. Lastly, the investigation instigated by the authorities after the events did not satisfy the requisite effectiveness criteria (*Karahmed v. Bulgaria*).

247. Furthermore, Article 9 (like Articles 10 and 11) cannot be interpreted as authorising an individual who disagrees with a religious organisation on a given point to interrupt or cause a disturbance during a ceremony. The Court declared manifestly ill-founded a complaint from a Romanian Orthodox nun, who was actively involved in denouncing alleged abuse in the hierarchy of her Church and had been sentenced to a fine for causing a disturbance during a ceremony conducted by the Romanian Orthodox Patriarch and shouting (or saying loudly) that he “did not deserve to be prayed for”. Since the fine imposed had been geared to punishing the public disturbance rather than the expression of an opinion, the Court held that the authorities had reacted within the framework of their normal margin of appreciation in such matters (*Bulgaru v. Romania* (dec.)).

248. Moreover, the Court has held that the *provocative portrayals of objects of religious veneration* can in some cases violate the rights of believers under Article 9 (*Otto-Preminger-Institut v. Austria*, § 47). However, the Court has hitherto almost invariably examined this type of case under Article 10 of the Convention (freedom of expression), adjudicating on complaints from persons who have been sanctioned for violating the necessary respect for believers' feelings (*ibid.*; *Wingrove v. the United Kingdom*; *İ.A. v. Turkey*; *Giniewski v. France*; *Klein v. Slovakia*; *E.S. v. Austria*; *Tagiyev and Huseynov v. Azerbaijan* *Tagiyev and Huseynov v. Azerbaijan*; *X. Ltd. and Y. v. the United Kingdom*, Commission decision).

249. On the other hand, the organs of the Convention have hitherto invariably dismissed complaints submitted under Article 9 by persons whose religious sensibilities have been offended. In particular,

the right to freedom from interference with the rights guaranteed by Article 9 does not necessarily and in all circumstances imply a right to bring any specific form of proceedings against those who, by authorship or publication, offend the sensitivities of an individual or of a group of individuals (*Dubowska and Skup v. Poland* (dec.)). The organs of the Convention rejected this kind of complaint in the following cases:

- dismissal for lack of *locus standi* of a claim by the Church of Scientology for damages in relation to hostile comments on Scientology proffered by a professor of theology in the course of a lecture and subsequently published in a local newspaper, because it had not been established that the comments in question had prevented the applicants from exercising their rights under Article 9 (*Church of Scientology and Others v. Sweden*, Commission decision);
- a refusal by the United Kingdom authorities to bring criminal proceedings against Salman Rushdie and a publisher for having written and published, respectively, the novel “The Satanic Verses”, which is considered blasphemous from the Islamic point of view (*Choudhury v. the United Kingdom*, Commission decision);
- a decision by the Polish public prosecutor’s office to discontinue criminal proceedings on the ground of public insult to religious feelings against the editor-in-chief of a weekly magazine for publishing, on its cover, an image of the Częstochowa Virgin and Child – an icon which is deeply venerated throughout Poland – replacing both their faces with gas-masks. The prosecution found that the image had been used to illustrate information on air pollution in Poland and had not been deliberately intended to offend religious sensibilities. The Commission noted that the applicants had had a domestic remedy against the insult to their religious feelings, which remedy they had relied on. It had been dismissed by the prosecutor following meticulous assessment of all the circumstances of the case and of the competing interests. That being the case, the applicants had not been deterred from exercising their rights under Article 9, and the mere fact that the authorities had ultimately found that no offence had been committed could not, in itself, be regarded as a failure to protect the rights guaranteed by that provision. For the same reason the Commission found that there had been no discrimination as prohibited by Article 14 (*Dubowska and Skup v. Poland* (dec.); *Kubalska and Kubalska-Holuj v. Poland*, Commission decision);
- an application against Denmark lodged by a Moroccan national living in Morocco and two Moroccan associations established and operating in that country, complaining about the Danish authorities’ refusal to prohibit and punish the publication of a series of caricatures of the Prophet of Islam, Mohammed. The Court noted that there was no link in terms of jurisdiction, for the purposes of Article 1 of the Convention, between the applicants and Denmark, even under any “extraterritorial act” (*Ben El Mahi and Others v. Denmark* (dec.)).

## 2. Religion at the workplace, in the army and in court

250. The Court has considered it legitimate to impose on civil servants, having regard to their status, a duty of discretion *vis-à-vis* Article 10 of the Convention (freedom of expression) or *vis-à-vis* public manifestations of their religious beliefs, with reference to Article 9. The ethical duties of a senior official representing the State may encroach on his private life where his behaviour, albeit in private, impairs the image or reputation of the institution which he represents. The Convention does not rule out the imposition of a duty of discretion or restraint on civil servants with a view to safeguarding the neutrality of the public service and ensuring respect for the principle of secularism. Nor does it preclude sanctions against officials for membership of political parties or groups promoting racist or xenophobic ideas, or against sects which forge rigid, unbreakable bonds of solidarity among their members or follow an ideology incompatible with the rules of democracy (*Sodan v. Turkey*, §§ 42 and 52). However, the mere fact that an official might have agreed with or belonged to a given religious movement was not sufficient grounds for taking action against him without clear evidence



that he had shown bias in his work or received instructions from members of that movement, or else that the latter had posed a genuine threat to national security (*Sodan v. Turkey*, § 54).

251. As regards the right of *members of the armed forces* to manifest their religion in the course of their duties, the Court has ruled that States can adopt disciplinary regulations for their armies prohibiting specific types of behaviour, particularly attitudes inimical to an established order reflecting the requirements of military service. For example, the Court found that there had been no interference with the freedom of religion of a judge advocate holding the rank of group captain in the Turkish air force, on the ground that “his conduct and attitude revealed that he had adopted unlawful fundamentalist opinions”. The Court pointed out that in choosing to pursue a military career the applicant had accepted of his own accord a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians. The applicant, within the limits imposed by the requirements of military life, had been able to fulfil the religious obligations imposed by his religion; as regards the impugned measure, it had been based not on his religious opinions and beliefs or the way he had performed his religious duties but on his conduct and attitude, thus breaching military discipline and infringing the principle of secularism (*Kalaç v. Turkey*; see also *Çınar v. Turkey* (dec.); *Acarca v. Turkey* (dec.); *Sert v. Turkey* (dec.)).

252. In other Turkish cases the organs of the Convention have pointed out that in the particular context of Turkey, the limitations specific to military service may include a duty for military personnel to refrain from participating in the Muslim fundamentalist movement, whose aim and programme is to ensure the pre-eminence of religious rules (*Tepeli and Others v. Turkey* (dec.); *Yanaşık v. Turkey*, Commission decision). In particular, the fact that a Turkish Military Academy prohibits cadets who have freely chosen a military career and who can fulfil their religious obligations within the limits imposed by military life from joining an Islamic fundamentalist movement does not constitute an interference with freedom of religion and conscience (*ibid.*).

253. As regards civil servants, the Court found a violation of Article 8 of the Convention read in the light of Article 9 in the case of the Deputy Governor of the Turkish capital (Ankara), who had been transferred to a similar post in the provinces on the grounds that he held specific religious beliefs, that he was “introverted” and that his wife wore the Islamic veil – despite the fact that he had never shown any bias in the exercise of his duties. Furthermore, the fact that the applicant’s wife wore the Islamic veil was a private matter for those concerned, and, moreover, no regulations had ever been adopted on the subject (*Sodan v. Turkey*, § 54).

254. The Court followed similar logic in the case of a Russian *judge* who had been dismissed from her post for failing in the obligations inherent in the judiciary and undermining the latter’s authority. The applicant in this case had used her position as a judge to promote the interests of her religious community and to intimidate parties to proceedings before her (for example she had prayed publicly during court hearings, had promised certain parties to proceedings a favourable outcome to their cases if they joined her Church, and had publicly criticised the morality of certain parties from the Christian angle). Consequently, the applicant had not been dismissed on the basis of her belonging to the Church or having any other “status”, but by reason of her specific activities, which had been incompatible with the requirements for judicial office and infringed the principle of the rule of law. The Court therefore decided that there had been an interference in the applicant’s exercise of her rights under Articles 10 and 9 but that that interference had been proportionate to the legitimate aims pursued (*Pitkevich v. Russia* (dec.)).

255. Further back in time, the Commission rejected an application lodged by a lawyer who was also an ordained Catholic priest (although he had never carried out pastoral duties), complaining (under Article 9 alone and in conjunction with Article 14) about the rejection by the Belgian Minister of Justice of his application for a post as substitute judge, the office of judge being incompatible with an ecclesiastical status under Belgian law. The Commission considered, first of all, that the applicant

had in no way been impeded in the exercise of his religion, including his priestly duties, and secondly, that the Convention did not secure *per se* a right to apply for a judicial post (*Demeester v. Belgium*, Commission decision; see, however, under Article 3 of Protocol No. 1, *Seyidzade v. Azerbaijan*).

256. In the framework of employment *relations in the public sector*, the Court found a violation of Article 9 of the Convention in a case involving the dismissal of an applicant, a swimming pool manager at a State vocational school in Bulgaria, because of her membership of a protestant evangelical community, against the general background of a political/media campaign against that community. Even though the impugned dismissal had complied with labour legislation and been formally based on a change in the qualification criteria for her post and the introduction of new criteria which the applicant did not meet, an analysis of the overall facts of the case led the Court to the conclusion that the real reason for the measure had indeed been the applicant's religious affiliation and beliefs. Furthermore, the Government had provided no evidence that there had ever been any credible accusations that the applicant had proselytised at the school or committed any professional fault (*Ivanova v. Bulgaria*).

257. The *ritual precepts* of certain religions (not to be confused with the *ethical precepts* mentioned in point II.A.2 Conscientious objection: the right not to act contrary to one's conscience and convictions above) can sometimes clash with their professional obligations of their adherents, who therefore demand that their employer (whether public or private) adopt specific measures to *accommodate* them. However, the Court found that there was no right as such under Article 9 to have leave from work for particular religious holidays (*Kosteski v. the former Yugoslav Republic of Macedonia*, § 45).

258. The Commission, in cases which it examined from this angle, always refused to afford applicants the protection of Article 9 § 1 of the Convention on the basis that the action taken against them had been motivated not by their religious beliefs but by specific contractual obligations between them and their employers. The Commission adjudicated in this way in the following cases:

- a refusal by the UK educational authorities to grant the applicant, a State school teacher of Muslim faith, leave of absence to attend Friday prayers at the mosque. He had been forced to resign and was then taken on again on a part-time basis with a lower salary. The Commission refused to examine in detail the question whether and to what extent Islam required attendance at congressional Friday prayers at the mosque; it simply noted that the applicant had, of his own free will, accepted teaching obligations under his contract, thus making himself unable both to work with the education authority and to attend Friday prayers. Moreover, for his first six years of service in the school the applicant had not taken leave of absence on Friday or informed his employer that he might require time off during normal school hours in order to attend prayers at the mosque. Moreover, in view of the exigencies of organising an educational system, Commission was not called upon to substitute for the assessment by the national authorities of what might be the best policy in this field (*X. v. the United Kingdom*, Commission decision of 12 March 1981);
- dismissal of an employee of the Finnish State Railways for failing to observe normal working hours on the grounds that the Seventh-Day Adventist Church, to which he belonged, prohibited its members from working after sunset on Fridays. Furthermore, the Commission found no appearance of religious discrimination (Article 14 of the Convention) because national legislation provided that Sunday was the usual weekly day of rest (*Kontinen v. Finland*, Commission decision);
- dismissal of an employee by a private sector employer (a travel agency) following her refusal to work on Sundays (*Stedman v. the United Kingdom*, Commission decision).

259. Similarly, the Court found no violation of Article 9 of the Convention in the case of disciplinary sanctions (in the form of temporary wage cuts) imposed on an applicant, an employee of the

Electricity Company of Macedonia, a public utility company, who had declared that he was a Muslim, for having taken time off work on two occasions in the space of a year on the occasion of Muslim religious festivals. The domestic courts had acknowledged that the law granted citizens of Muslim faith the right to paid leave on their religious feast days. In the specific case of the applicant, however, the sincerity of his professed belonging to that religion was doubtful because he was ignorant of the basic tenets of that religion and because previously he had always celebrated Christian holidays. The domestic courts had therefore found that the applicant had claimed to be a Muslim solely in order to benefit from additional days of leave. The Court accepted that where the law established a privilege or special exemption for members of a given religious community – especially in the employment field – it was not incompatible with Article 9 to require the person concerned to provide some level of substantiation of his belonging to that community (in line with the same logic as in cases of conscientious objection, where the applicant must in principle be able to prove the sincerity of his convictions). Accordingly, while expressing doubts as to whether the case concerned a “manifestation” of the applicant’s alleged religion, the Court found that the interference complained of had been “necessary in a democratic society” for the protection of the rights of others, within the meaning of Article 9 § 2. It also found that there had been no discrimination within the meaning of Article 14 (*Kosteski v. the former Yugoslav Republic of Macedonia*).

260. As regards the *religious freedom of parties to judicial proceedings*:

- the Commission declared inadmissible an application lodged by two Austrian nationals of Jewish religion, who had been defendants in civil proceedings, complaining about the court’s refusal to adjourn the hearing to be held during the Jewish Feast of Tabernacles (*Sukkot*). Examining the case chiefly under Article 6 § 1 (right to a fair trial), the Commission found an absence of expedition on the part of the applicants, as they had taken an excessively long time to alert the court to the incompatibility. It also rejected the applicants’ complaints under Article 9 alone and in conjunction with Article 14 (prohibition of discrimination) (*S.H. and H.V. v. Austria*, Commission decision);
- the Court found no violation of Article 9 of the Convention in the case of a refusal by a judicial authority to adjourn a hearing which the applicant, a lawyer of Jewish religion, was to attend as representative of one of the two plaintiffs in a criminal case; the date of the hearing coincided with a Jewish religious holiday. The applicant did not attend the hearing, which went ahead in his absence. The Court held that the applicant should have expected his request to be rejected in pursuance of the legal provisions in force, and that he could have arranged to be replaced at the hearing in question (*Francesco Sessa v. Italy*).

### 3. Religious freedom for prisoners

261. During their imprisonment, prisoners continue to enjoy all the fundamental rights and freedoms guaranteed by the Convention, save for the right to liberty (*Korostelev v. Russia*, § 57). Consequently, the national authorities are required to respect prisoners’ freedom of religion by refraining from any unjustified interference with the exercise of the rights laid down in Article 9 of the Convention and, if necessary, taking positive action to facilitate the free exercise of those rights, having regard to the particular requirements of the prison environment. Moreover, the question whether or not to adopt detailed regulations on the mode of exercise of a given religion in prison falls, in principle, within the margin of appreciation of the State authorities, which are best placed to decide on the local needs and situations (*Erlich and Kastro v. Romania*, § 34). In so doing the national authorities must organise and coordinate in such a way as to ensure adequate circulation and sharing of information on prisoners who wish to exercise their freedom of religion (*Saran v. Romania*, § 40).

262. The fact of being required to pray, read religious books and meditate in the presence of other prisoners is an inconvenience which is virtually unavoidable in prison, but which does not go against the very essence of the freedom to manifest one's religion (*Kovaļkovs v. Latvia* (dec.)). On the other hand, as a general rule, Article 9 grants prisoners neither the right to proselytise in the institution where they are being held nor the right to manifest their religion outside that institution (*J.L. v. Finland* (dec.)).

263. Similarly, Article 9 affords prisoners neither the right to be recognised as a “political prisoner” with a special status different from other prisoners, nor the right to be exempted from the general rules governing prison life such as the obligation to work, wear prison uniform and clean their cells (*McFeeley and Others v. the United Kingdom*, Commission decision; *X. v. the United Kingdom*, Commission decision of 6 March 1982). The Commission also decided that Article 9 did not impose on States any general obligation to provide prisoners with installations which the latter considered necessary for exercising their religion or developing their life philosophy (*X. v. Austria*, Commission decision of 15 February 1965).

264. As a general rule the Court accepts the argument that the decision to make special arrangements for one prisoner within the system can have financial implications for the custodial institution and thus indirectly on the quality of treatment of other inmates; it must therefore consider whether the State can be said to have struck a fair balance between the interests of the institution, other prisoners and the particular interests of the prisoner in question (*Jakóbski v. Poland*, § 50; *Erlich and Kastro v. Romania*, § 34). Furthermore, an arrangement whereby a prisoner is authorised to obtain by his own means foodstuffs complying with the precepts of his religion must not impose a burden on him which he would be unable to shoulder for objective financial reasons (*Erlich and Kastro v. Romania*, § 40).

265. In fact, the same general principles are applicable to detention in prison and house arrest, where the law of the State in question provides for such a measure (*Süveges v. Hungary*, §§ 147-157). The same applies to detention of an alien prior to his expulsion (*C.D. and Others v. Greece*, §§ 78-79).

266. The Court found a violation of Article 9 of the Convention in the following cases:

- the inability of prisoners to receive visits from a priest or pastor (*Poltoratski v. Ukraine*, §§ 163-171; *Kuznetsov v. Ukraine*, §§ 143-151); *Mozer v. Republic of Moldova and Russia* [GC], §§ 197-199);
- a refusal by the competent authorities to authorise the applicants, who had been remanded in custody, to take part in religious celebrations held at the prison chaplaincy and the confiscation of religious books and objects, which measures had lacked any basis in domestic law (*Igors Dmitrijevs v. Latvia*; *Moroz v. Ukraine*, §§ 104-109);
- a refusal by the prison administration to provide the applicant, a Buddhist, with meat-free meals, even though such an arrangement would not have been an excessive burden on the prison (*Jakóbski v. Poland*); *Vartic v. Romania (no. 2)*). In the latter case, in particular, the applicant could only have obtained food containing meat which was intended for sick prisoners. The Court noted that the applicant had had very limited possibilities of obtaining food compatible with his religion, especially after the Ministry of Justice prohibited food parcels being received by post (*ibid.*, §§ 47-50);
- a refusal to provide a prisoner who had become a Muslim in prison with meals complying with the requirements of his new religion, on the grounds that he had not presented any document demonstrating that he had converted to Islam (*Neagu v. Romania*; see also the case of *Saran v. Romania*, in which the applicant had declared that he was a Muslim when he arrived in prison, and where the impugned situation had in fact originated in an administrative error and a lack of coordination among the authorities);

- a disciplinary sanction in the form of a reprimand imposed on a Muslim prisoner held in an individual cell for performing an act of Islamic worship (*Salah*) at night-time in formal breach of the prison rules, which provided for “sleep without interruption” (*Korostelev v. Russia*).

267. On the other hand, the organs of the Convention found that there had been no appearance of a violation of Article 9 in the following cases:

- a prohibition on a Buddhist prisoner growing a goatee beard (the reason given being the need to avoid hampering his identification) and a refusal to return to him his prayer beads, which had been placed in safe custody on his committal to prison. The Commission considered that those restrictions had been in conformity with Article 9 § 2 inasmuch as they had been intended to protect public order (*X. v. Austria*, Commission decision of 15 February 1965);
- the alleged inability of a United Kingdom national imprisoned in Germany to attend Anglican service or receive visits from an Anglican priest. The Commission found that the applicant had in fact had access to Protestant worship and Protestant pastors (*X. v. Germany*, Commission decision of 16 December 1966);
- the prohibition on a Buddhist prisoner sending articles for publication in a Buddhist magazine, even though the applicant had not explained why the observance of his religion involved or required the publication of such articles (*X. v. the United Kingdom*, Commission decision of 20 December 1974), and a refusal to authorise another Buddhist prisoner to subscribe to a Roman Catholic magazine, although the latter was very clearly devoid of any link with his religion (*X. v. Austria*, Commission decision of 15 February 1965);
- the conditions of detention of an Orthodox Jew who had been offered kosher vegetarian meals and who had been allowed to receive visits from a lay Jewish visitor assisted by the prison chaplain, whereby the Chief Rabbi had approved the authorities’ efforts to safeguard the applicant’s religious rights (*X v. the United Kingdom*, Commission decision of 5 March 1976);
- measures taken by the prison authorities to meet the religious dietary needs of two prisoners of Jewish faith (installing a separate kitchen for preparing kosher meals, as approved by a Jewish religious foundation; obtainability of kosher products from the latter foundation; possible reimbursement of the costs incurred by means of a separate civil action), even in the absence of a specific statutory framework (*Erllich and Kastro v. Romania*, § 40);
- the case of four Muslim men who were detained in a holding centre prior to their expulsion and who complained that they had been forced to eat pork; it transpired from the case-file that the food provided for Muslim detainees had contained no pork, and that two of the caterers supplying the centre had themselves been Muslims and provided pork-free meals (*C.D. and Others v. Greece*, §§ 78-79);
- the retention by the prison administration of a philosophical/religious book ordered by a Taoist prisoner on the grounds that it contained a chapter, with illustrations, on the martial arts; this interference had been necessary for the protection of the “rights and liberties of others” (*X. v. the United Kingdom*, Commission decision of 4 October 1977);
- a refusal by a prison director to enter the applicant in the prison registers as an adherent of the “Wicca” religion. The Commission held that where such an entry involved certain privileges and facilities for the prisoner to practice his religion, it was reasonable to require the declared religion to be identifiable; however, the applicant had provided no evidence to enable the objective existence of such a religion to be established (*X. v. the United Kingdom*, Commission decision of 4 October 1977). In a similar case the Commission rejected an application from a prisoner who claimed to be a “worshipper of the light”



(“*Lichtanbeter*”) but who had not explained how his religion was practised or how the authorities had impeded such practice (*X. v. Germany*, Commission decision of 1 April 1970);

- a refusal by prison authorities to rectify an alleged administrative error in a prisoner’s file concerning his religious affiliation (he had been registered as an Orthodox Christian even though he professed to be Jewish), where the alleged error had had absolutely no real, practical impact on his ability to manifest any religion he wished (*Mariş v. Romania* (dec.)) ;
- a series of disciplinary penalties imposed on an applicant for refusing to wear prison uniform and to clean his cell. The applicant stated that as a Sikh he recognised no authority between himself and his God, particularly since he maintained that he was a “political prisoner” (whence his refusal to wear uniform); moreover, since he was of high caste, it was “culturally unacceptable” for him to clean floors (whence his refusal to clean his cell). The Commission declared the first complaint (concerning uniform) incompatible with the Convention (partly *ratione materiae* and partly *ratione personae*) and the second manifestly ill-founded: even supposing there had been an interference in the applicant’s freedom of religion, it had been necessary for the protection of health and justified within the meaning of Article 9 § 2 (*X. v. the United Kingdom*, Commission decision of 6 March 1982);
- a disciplinary penalty imposed on a prisoner for refusing to work in a print shop on the ground that as an adherent of veganism he found it morally unacceptable to work with products which had allegedly been tested on animals (dyes). Even assuming that there had been an interference with the applicant’s rights under Article 9, it had been in conformity with Article 9 § 2. On the one hand, the Commission accepted the respondent Government’s argument that it was necessary to have a system of allocation of work which is perceived to be fair and without favouritism, and on the other it noted the leniency of the penalty (*W. v. the United Kingdom*, Commission decision);
- a refusal to authorise an applicant, who was considered dangerous and was subject to a special high-security detention regime, to attend Mass, although he was able to watch Mass from his cell and he had never claimed to have been prevented from receiving visits from a chaplain (*Indelicato v. Italy* (dec.); see also *Natoli v. Italy*, Commission decision);
- a refusal to authorise an applicant, who was under house arrest, to leave home every Sunday to attend Mass, especially since his request had been too broadly worded and he had omitted to specify which church or place of worship he wished to attend (*Süveges v. Hungary*, §§ 153-154);
- a refusal by the prison administration to grant an applicant, an adherent of the *Hare Krishna* movement, a separate room where he could read, pray, meditate and read religious material, as well as the confiscation of his incense sticks, the latter on grounds of the need to respect the rights of other prisoners (*Kovaļkovs v. Latvia* (dec.)).

268. The Court also dismissed the complaints of an applicant who had committed a series of very serious crimes and had been forcibly interned in a psychiatric hospital. As the applicant had stated that he was a Jehovah’s Witness, the hospital had allowed him to keep in touch with that religious organisation; he had however, been admonished for preaching and distributing leaflets to other patients and hospital staff. The Court considered that that measure had been necessary in order to maintain order in the hospital and to protect the interests of other patients. For the remainder the Court found that the applicant’s rights under Article 9 had been respected (*J.L. v. Finland* (dec.)).

## List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights (“the Commission”).

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (\*) in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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