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*Cultural rights in the case-law of the
European Court of Human Rights*

COUNCIL OF EUROPE



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SUMMARY

This report provides a selection of the Court’s main jurisprudence in the context of cultural rights. Although neither the Convention nor the Court explicitly recognise the “*right to culture*” or the right to take part in cultural life, unlike other international treaties, the Court’s case-law provides interesting examples of how some rights falling under the notion of “*cultural rights*” in a broad sense can be protected under core civil rights, such as the right to respect for private and family life (Article 8 of the Convention), the right to freedom of expression (Article 10) and the right to education (Article 2 of Protocol No. 1).

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INTRODUCTION

1. This report illustrates the approach of the European Court of Human Rights (hereafter the Court) in selected areas linked to the question of cultural rights. The selection was made taking into account the most recent case-law in this field. Although the European Convention does not explicitly protect cultural rights as such (unlike other international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights), the Court, through a dynamic interpretation of the different Articles of the Convention, has gradually recognised substantive rights which may fall under the notion of “*cultural rights*” in a broad sense. The provisions mostly invoked in relation to cultural rights are Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the Convention, as well as Article 2 of Protocol No. 1 (right to education). Another factor which may explain the growing importance of cultural rights in the Court’s case-law is the number of cases brought by persons or entities belonging to national minorities, including cultural, linguistic or ethnic minorities. This is particularly true concerning the right to maintain a minority identity and to lead one’s private and family life in accordance with the traditions and culture of that identity. Although the Court does not always rule in favour of cultural rights and cultural minorities, the key principles it has established in its case-law provide a basis for future litigation and development.

2. The following developments describe different areas of the Court’s case-law dealing with cultural rights, covering issues such as artistic expression, access to culture, cultural identity, linguistic rights, education, cultural and natural heritage, historical truth and academic freedom. These areas are interconnected and it is sometimes difficult to separate one from the other, especially as regards the rights inferred from freedom of expression. Since this report does not aim to be exhaustive, it will refer to the most important and recent case-law in the selected areas. Reference should also be made to our report “*Aspects of Intercultural Dialogue in the European Court of Human Rights’ case-law*” of 2007 (the Court’s contribution to the preparation of the *White Paper on Intercultural Dialogue*¹) and our report on the Court’s case-law on freedom of religion, prepared in January 2011 for the Parliamentary Assembly of the Council of Europe.²

¹ Available from the website of the Council of Europe:

www.coe.int/t/dg4/intercultural/Publication_WhitePaper_ID_en.asp.

² Available in French from the website of the European Court of Human Rights: [www.echr.coe.int \(Case-Law / Case-Law Analysis / Research Reports\)](http://www.echr.coe.int/Case-Law/Case-Law%20Analysis/Research%20Reports)

I. RIGHT TO ARTISTIC EXPRESSION

3. The Court has underlined the importance of artistic expression in the context of the right to freedom of expression (Article 10 of the Convention). Generally, it has applied a high level of protection when it has dealt with artistic works such as novels, poems, paintings, etc. On the one hand, artistic works afford the opportunity to take part in the exchange of cultural, political and social information and ideas of all kinds, which is essential for a democratic society. On the other hand, when assessing the character of some of the expressions contained in the artistic work which might justify the interference of the State, the Court has taken into account the limited impact of the form of artistic expression at stake (especially novels or poems, compared to films), which generally appeals to a relatively narrow public compared to, for example, the mass media. Therefore, the Court has considered throughout its jurisprudence that visual arts, literary creation or satire may be considered as forms of artistic expression and are therefore protected by Article 10 of the Convention.

1. Visual arts

4. In the case of *Müller and Others v. Switzerland*, the Court already had occasion to point out that Article 10 covered freedom of artistic expression – notably within freedom to receive and impart ideas – adding that it afforded the opportunity to take part in the exchange of cultural, political and social information and ideas (§ 27) and it concluded that this imposed on the State a particular obligation not to encroach on the freedom of expression of creative artists (§ 33). However, having regard to the fact that the paintings in question depicted in a crude manner sexual relations and that they were displayed in an exhibition which was unrestrictedly open to the public at large, the Court concluded that the applicants' conviction did not infringe Article 10. Similarly, in the case of *Otto-Preminger-Institut v. Austria*, the Court held that the seizure and forfeiture of a film containing a provocative portrayal of God, the Virgin Mary and Jesus Christ, with the result that the planned showings in a cinema could not take place, was justified in order to protect the right of citizens not to be insulted in their religious feelings.³ The Court accepted the reasoning of the Austrian courts, which did not consider that the merits of the film as a work of art or as a contribution to public debate outweighed those features which made it essentially offensive to the general public. Likewise, the Court considered in the case of *Wingrove v. United Kingdom* that a complete ban on a movie

³ See also *İ.A. v. Turkey* (no. 42571/98, ECHR 2005-VIII), where the Court concluded that the conviction of the managing director of a publishing house which published a novel was intended to provide protection against offensive attacks on matters regarded as sacred by Muslims.

considered as blasphemous did not infringe Article 10 as the national authorities did not overstep their margin of appreciation.

5. In the case of *Ehrmann and SCI VHI v. France* (dec.), the applicants (a visual artist and a real estate company) were subjected to criminal and civil penalties for breaching planning regulations on account of the art works that were placed on the outer walls and boundary wall of a well-known contemporary art venue located within sight of a church and a manor house, both of which landmark buildings. The Court dismissed the applicants' complaint under Article 10 as manifestly ill-founded and underlined that in the present case the disputed interference intended to ensure the quality of the environment surrounding protected national heritage structures and that "*this was a legitimate aim for the purposes of protecting a country's cultural heritage*". It referred to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, adopted on 27 October 2005. As to the proportionality of the interference at issue, the Court considered that the restriction on the applicants' freedom of expression was limited. It held, in particular that "*the limitation on the exercise of freedom of expression was confined to the boundary wall and outer wall, which were situated within the field of visibility of edifices enumerated on the secondary list of historic buildings, and did not affect the work as a whole. The general interest, which in the present case is constituted by the protection of heritage, requires that the applicants comply with certain planning regulations. [...] With those considerations, the Court finds that the restrictions to freedom of expression affected only, in the general interest and in a very limited manner, a condition of the exercise of such right.*"

2. Literary creation

6. In the area of literary creation the Court applied Article 10 of the Convention to poetry in its *Karataş v. Turkey* case [GC]:

"The work in issue contained poems which, through the frequent use of pathos and metaphors, called for self-sacrifice for 'Kurdistan' and included some particularly aggressive passages directed at the Turkish authorities. Taken literally, the poems might be construed as inciting readers to hatred, revolt and the use of violence. In deciding whether they in fact did so, it must nevertheless be borne in mind that the medium used by the applicant was poetry, a form of artistic expression that appeals to only a minority of readers" (§ 49).

It also declared as follows: "As to the tone of the poems in the present case – which the Court should not be taken to approve – it must be remembered that Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed" (*ibid.*).

7. Moreover, the Court considered that the fact that the poems "*were artistic in nature and of limited impact made them less a call to an uprising*

than an expression of deep distress in the face of a difficult political situation” (§ 52). In conclusion, the Court stated that the applicant’s conviction was disproportionate and not necessary in a democratic society (§ 54).

8. The case of *Alinak v. Turkey* concerned a novel about the torture of villagers that was based on real events. The Court observed as follows:

“... the book contains passages in which graphic details are given of fictional ill-treatment and atrocities committed against villagers, which no doubt creates in the mind of the reader a powerful hostility towards the injustice to which the villagers were subjected in the tale. Taken literally, certain passages might be construed as inciting readers to hatred, revolt and the use of violence. In deciding whether they in fact did so, it must nevertheless be borne in mind that the medium used by the applicant was a novel, a form of artistic expression that appeals to a relatively narrow public compared to, for example, the mass media” (§ 41).

9. The Court pointed out that *“the impugned book [was] a novel classified as fiction, albeit purportedly based on real events”*. It further observed as follows:

“... even though some of the passages from the book seem very hostile in tone, the Court considers that their artistic nature and limited impact reduced them to an expression of deep distress in the face of tragic events, rather than a call to violence” (§ 45).

10. The Court concluded that the order to seize the book was disproportionate to the aims pursued, in violation of Article 10 of the Convention.

11. In its Grand Chamber judgment *Lindon, Otchakovsky-Laurens and July v. France* [GC], the Court had to examine whether the conviction of the author and publisher of a novel (introducing real characters and facts) for defamation of an extreme-right wing party and its president (Mr. Le Pen) amounted to a violation of Article 10. Referring to its case-law on artistic creation (§ 47), it stated that *“novelists – like other creators - and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10. Whoever exercises his freedom of expression undertakes, in accordance with the express terms of that paragraph, ‘duties and responsibilities’”* (§ 51). Therefore, the conviction for defamation in the present case could not be criticised from the standpoint of Article 10 in view of the virulent content of the offending passages and the fact that they specifically named the *“Front National”* and its chairman. The Court considered that the French courts had made a reasonable assessment of the facts in finding that to liken an individual to the *“chief of a gang of killers”*, to assert that a murder, even one committed by a fictional character, had been *“advocated”* by him, and to describe him as a *“vampire who thrive[d] on the bitterness of his electorate, but*

sometimes also on their blood”, “*overstep[ped] the permissible limits in such matters*”. Although in principle there is no need to make a distinction between allegations of fact and value judgments when dealing with extracts from a novel, the Court noted that nevertheless this distinction became fully pertinent when the impugned work, as in the present case, was not one of pure fiction but introduced real characters or facts (§ 55).

12. In the case of *Jelševar and Others v. Slovenia* (dec.) the applicants complained about the allegedly defamatory portrayal of their family in a published short story and the failure of the domestic courts to protect their rights to respect for their private and family life. They claimed that the Constitutional Court had subjectively favoured the author’s right to freedom of artistic expression and failed to strike a fair balance between the two rights. In declaring the application inadmissible as manifestly ill-founded, the Court stressed that “*artistic freedom enjoyed by, among others, authors of literary works is a value in itself, and thus attracts a high level of protection under the Convention*” (§ 33). It noted that the reasoning of the national jurisdictions seemed coherent and that the Constitutional Court did not overstep its margin of appreciation when striking a fair balance between the conflicting rights (§§ 35-39).

13. In the case of *Almeida Leitão Bento Fernandes v. Portugal*, the Court considered that there was no violation of Article 10 of the Convention in respect of the criminal conviction of the applicant, who had overstepped the limits of her freedom of expression in a novel relating family dramas. The Court held that, in weighing the right of the applicant to freedom of artistic creation against the right of the complainants (her in-laws) to respect of their private life, the Portuguese courts had followed the jurisprudence of the Court in this type of case and therefore saw no reason to depart from their assessment (*ibid.*, §§ 55-57).

3. Satire

14. In its 25 January 2007 judgment in *Vereinigung Bildender Künstler v. Austria* concerning an injunction against the exhibition of a painting considered to be indecent (a painting which had been produced for the occasion by the Austrian painter Otto Mühl, showing a collage of various public figures, such as Mother Teresa and the former head of the Austrian Freedom Party (FPÖ) Mr Jörg Haider, in sexual positions), the Court based its findings (violation of Article 10 of the Convention) on the same principles as those that govern its case-law on artistic creation, observing that “*artists and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10*” (§ 26). However, the following assessment was given in paragraph 33 of that judgment:

“The Court finds that such portrayal amounted to a caricature of the persons concerned using satirical elements. It notes that satire is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with an artist’s right to such expression must be examined with particular care”.

15. The Court applied these principles in the case of *Alves Da Silva v. Portugal* where the applicant was criminally convicted for driving around the city during a carnival with a puppet representing the mayor of Mortágua with symbols of corruption on the puppet and for broadcasting a pre-recorded satirical message suggesting that the mayor had received illegal sums of money. The Court held that the message was clearly of a satirical nature and was therefore a form of artistic expression and social commentary. It concluded that the conviction was disproportionate, amounting to a violation of the freedom of expression of the applicant.

16. Nevertheless, the protection accorded to the freedom of expression through satire may depend on the context. In *Palomo Sánchez and others v. Spain* [GC], the Court took “*particular account ... of the professional context*” in which the cartoon and texts of the applicants appeared (§§ 70-71), and did not qualify them as “satire”. To consider that “*the measure of dismissal taken against the applicants was not a manifestly disproportionate or excessive sanction*” (*ibid.*, § 77), the Court explained that “*an attack on the respectability of individuals by using grossly insulting or offensive expressions in the professional environment is, on account of its disruptive effects, a particularly serious form of misconduct capable of justifying severe sanctions*” (*ibid.*, § 76).

17. The Court held that humorous cigarette advertisements, using the name of notorious personalities (claiming the violation of their right to respect for private life) and dealing with events of public interest, could be considered as satire and therefore contribute to a debate of general interest (*Ernst August Von Hannover v. Germany*, § 49; *Bohlen v. Germany*, § 50).

18. Finally, in its decision in the case of *M’Bala M’Bala v. France*, the Court examined the use of artistic expression as a vehicle for anti-Semitism. The applicant, a well-known comedian, was convicted and fined for having insulted the Jewish community following a public performance during which he had engaged in anti-Semitic remarks, acts and gestures; in the Convention proceedings, he relied on Article 10 of the Convention. The Court found that “*The applicant cannot claim, in the particular circumstances and having regard to the whole context, that he acted as an artist with an entitlement to express himself using satire, humour and provocation. ... the Court is of the view that this was a demonstration of hatred and anti-Semitism, supportive of Holocaust denial. It is unable to accept that the expression of an ideology which is at odds with the basic values of the Convention, as expressed in its Preamble, namely justice and*

*peace, can be assimilated to a form of entertainment, however satirical or provocative, which would be afforded protection by Article 10 of the Convention” (M’Bala M’Bala v. France (dec.), § 39). The Court considered that “the applicant has attempted to deflect Article 10 from its real purpose by seeking to use his right to freedom of expression for ends which are contrary to the text and spirit of the Convention and which, if admitted, would contribute to the destruction of the rights and freedoms guaranteed by the Convention”, and therefore could not enjoy the protection of Article 10. Pursuant to Article 17 of the Convention, it declared the application inadmissible (*ibid.*, §§ 41-42).*

II. ACCESS TO CULTURE

1. Access to culture through the Internet and television

19. The Court considered that because of its accessibility and capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the sharing and dissemination of information generally (see *Times Newspapers Ltd v. the United Kingdom* (nos. 1 and 2), § 27).

20. In several cases, the Court examined applications of individuals alleging a violation of their right to freedom of expression where the authorities had blocked access to certain websites. In *Ahmet Yildirim v. Turkey*, § 67 the applicant was unable to access his website which he used for professional purposes after a national court’s decision to block access to all Google Sites with the aim of blocking access to another internet site whose owner was facing criminal proceedings. The Court found that the interference with the applicant’s right to receive and impart information was not prescribed by law and the applicant had not been afforded the degree of protection to which he was entitled under the rule of law in a democratic society. The Court underlined the shortcomings of the relevant law, notably, the fact that it conferred extensive powers on an administrative body and did not set out any obligation for the domestic courts to examine whether the total blocking of Google Sites was necessary, having regard to the criteria established and applied by the Court under Article 10 of the Convention. In this connection the Court underlined that such a restriction on Internet access had rendered large amounts of information inaccessible, thus substantially restricting the rights of internet users and had a significant collateral effect (§ 66).

21. In the decision *Akdeniz v. Turkey* (dec.), the applicant was a frequent user of music sharing websites which were blocked by the authorities on the ground of breach of copyright. The Court declared the application

inadmissible for being incompatible *ratione personae*. It considered that the applicant “could not claim to be a “victim” of a violation of Article 10 of the Convention on account of the impugned measure”, since he could “have had access to a range of musical works by numerous means without this entailing a breach of copyright rules”. The Court considered this case to be different from the *Yıldırım* case where the applicant was the owner of the blocked website and was unable to access it.

22. The Court reaffirmed its jurisprudence in the case of *Cengiz and Others v. Turkey* where the applicants were law professors and active users of YouTube as holders of accounts allowing them to access, download, and share video material for professional purposes. They all challenged a court decision ordering a blanket blocking of access to YouTube (based on the finding that certain video materials were offensive to the memory of Atatürk and thus in breach of domestic law). The Court found that the applicants could be considered as victims of the alleged breach of Article 10 as they all had YouTube accounts and made substantial use of its services for professional purposes (see *Ahmet Yıldırı*, cited above) and were not mere users of the website (see the above-cited decision *Akdeniz v. Turkey*). The Court also underlined the importance of YouTube in exercising the freedom of expression, in disseminating and exchanging not only artistic and musical creations but also political ideas and information (*Cengiz and others v. Turkey*, §§ 51-52).

23. In *Ashby, Donald and Others v France*, the Court gave consideration to freedom of expression, access to culture, copyright infringement and the protection of property, the latter enshrined in Article 1 of Protocol No. 1. The first and second applicant ran an internet site on which they published photos taken at fashion shows by the third applicant, but without the authorisation of the fashion houses concerned. The Court held that their conviction for copyright infringement amounted to an interference within the meaning of Article 10 of the Convention (§ 34). The Court confirmed this approach in the case of *Neij and Sunde Kolmisoppi v. Sweden* (dec.) where the applicants were convicted for their involvement in the running of a website which made it possible for users to share digital material such as movies, music and computer games, which were copyright protected. The Court, considering that the applicants put in place the means for others to impart and receive information within the meaning of Article 10 of the Convention, held that their convictions interfered with their right to freedom of expression. The Court found, however, that having regard to the circumstances of the case, in particular the nature of the information contained in the shared material and the weighty reasons for the interference with the applicants’ freedom of expression, the interference was “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention (*ibid*).

24. Regarding the right to access to culture through television, the Court has also had occasion to rule on the right of migrants to maintain their cultural links with their countries of origin. In the case of *Khurshid Mustafa and Tarzibachi v. Sweden*, which concerned the eviction of tenants on account of their refusal to remove a satellite dish that enabled them to receive television programmes in Arabic and Farsi from their country of origin (Iraq), the Court developed its case-law on freedom to receive information under Article 10. It emphasised the importance of such freedom for an immigrant family with three children, who may wish to maintain contact with the culture and language of their country of origin. The Court also pointed out that the freedom to receive information does not extend only to reports of events of public concern, but covers in principle also cultural expressions as well as pure entertainment (§ 44).

2. Access to the cultural heritage

25. Firstly, with regard to access to a common cultural heritage, the Court developed its case-law on reconciling freedom of artistic expression and the protection of morals in the judgment of *Akdaş v. Turkey*. The case concerned the sentencing of a publisher to a heavy fine for the publication in Turkish of an erotic novel by Guillaume Apollinaire (dating from 1907) and seizure of all the copies of the book. The Court considered that the view taken by the States of the requirements of morality “*frequently requires [them] to take into consideration the existence, within a single State, of various cultural, religious, civil or philosophical communities*”. It enshrined the concept of a “*European literary heritage*” and set out in this regard various criteria: the author’s international reputation; the date of the first publication; a large number of countries and languages in which publication had taken place; publication in book form and on the Internet; and publication in a prestigious collection in the author’s home country (*La Pléiade*, in France). The Court concluded that the public of a given language, in this case Turkish, could not be prevented from having access to a work that is part of such a heritage (§ 30).

26. Secondly, with regard to access to one’s cultural heritage, in the case of *Catholic Archdiocese of Alba Iulia v. Romania*, (no. 33003/03, 25 September 2012), which concerned the State’s failure, despite a Government regulation dating back to 1998, to return to their former owner, a catholic religious community, a library and a museum of great historical and cultural importance, the Court, when ruling on a violation of Article 1 of Protocol No.1, emphasized that the State’s prolonged failure to act and the uncertainty affecting the applicant for fourteen years with regard to the legal status of the property claimed by it was all the more unreasonable when account was taken of the cultural and historical importance of the assets in question.

27. The Court (Grand Chamber) delivered a judgement on 16 June 2015 in the case of *Sargsyan v. Azerbaijan*. The applicant especially complained that he had been denied the right to access his property and home located in a village near Nagorno-Karabakh, a disputed area between Armenia and Azerbaijan. In considering whether Article 8 was applicable, the Court explained that “*the applicant’s cultural and religious attachment with his late relatives’ graves in Gulistan may also fall within the notion of “private and family life”*” (§ 257). It found a “*continuing breach of the applicant’s rights under Article 8 of the Convention*”, because of “*the impossibility for the applicant to have access to his home and to his relatives’ graves in Gulistan without the Government taking any measures in order to address his rights or to provide him at least with compensation for the loss of their enjoyment, placed and continues to place a disproportionate burden on him*” (§ 260-261).

3. Access to culture for prisoners

28. The Court analysed the issue of access to culture for prisoners through various Articles of the Convention, namely: Article 14 in conjunction with Article 8, Article 6 and Article 10.

29. In the case of *Laduna v. Slovakia*, the applicant complained that remand prisoners did not have the same visiting rights as convicted prisoners, and whereas convicted prisoners had access to television, remand prisoners had no access. The Court stated that “*the fact that the applicant was unable to watch television programmes while in detention might, in the circumstances, have had a bearing on his private life as protected under Article 8, which includes a right to maintain relationships with the outside world and also a right to personal development*” (§ 53). It found that the Government had failed to put forward any objective justification for treating remand prisoners differently to convicted prisoners, for whom television was considered part of their cultural and educational activities. The Court therefore concluded that there was a violation of Article 14 taken in conjunction with Article 8 of the Convention (§§ 70-74).

30. The case *Boulois v. Luxembourg* [GC] dealt with repeated refusals from the prison authorities to grant temporary leave of absence to a convicted prisoner wishing to take courses and carry out administrative formalities. The Court (Grand Chamber) found that Article 6 § 1 of the Convention did not apply either under its criminal head (as the proceedings concerning the prison system did not relate in principle to determination of a criminal charge (§ 85)) or under the civil head because the applicant did not have a “civil right” to such prison leave. The Court considered that prison leave was considered as a privilege and not as a right in the domestic legal system (§§ 96-101). Although it recalled “*the legitimate aim of a policy of progressive social reintegration of persons sentenced to imprisonment*”, it

noted that “*neither the Convention nor the Protocols thereto expressly provide for a right to prison leave*” (§ 102).

31. In the case of *Kalda v. Estonia*, the Court considered that there was a violation of Article 10 of the Convention as the applicant’s access to certain legal websites in prison had been prohibited. Indeed, the Court noted that access to official databases of legislation and the database of judicial decisions was authorized, unlike access to three websites in particular which contained legal information on fundamental rights, including the rights of prisoners (§ 50). The Court held that “*Article 10 cannot be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites, for prisoners*” (§ 45). It concluded however that “*the interference with the applicant’s right to receive information in the specific circumstances of the present case cannot be regarded as having been necessary in a democratic society*” and that there was a violation of Article 10 (§ 54). The Court reached a similar conclusion in the case of *Jankovskis v. Lithuania*, where the applicant was refused Internet access in prison and was therefore prevented from receiving information on the possibility of enrolling at university.

III. RIGHT TO CULTURAL IDENTITY

32. The right to cultural identity has been indirectly protected by the Court under various Articles of the Convention, namely: Article 8 and the right to lead one’s life in accordance with a cultural identity and the right to choose freely a cultural identity; Article 9 and the right to a religious identity; Article 11 and the freedom of association with a cultural purpose.

1. Right to lead one’s life in accordance with a cultural identity and the right to choose freely a cultural identity

33. In several cases, the Court dealt with the right of individuals belonging to Roma and Travellers to lead their life according to their cultural identity and traditions as protected by the right to respect for private and family life and home.

34. In the case of *Chapman v. the United Kingdom* [GC], the Court had to examine the question of the lifestyle of gypsy families and the specific difficulties they have to park their caravans on their own property. In its judgment, the Grand Chamber recognised that Article 8 of the Convention, which guarantees the right to respect for private and family life and the home, protects the right to maintain a minority identity and to lead one’s private and family life in accordance with that tradition. The Court stated (§ 73):

“The Court considers that the applicant’s occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle. This is the case even though, under the pressure of development and diverse policies or by their own choice, many Gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children. Measures affecting the applicant’s stationing of her caravan therefore have an impact going beyond the right to respect for her home. They also affect her ability to maintain her identity as a Gypsy and to lead her private and family life in accordance with that tradition.”

35. The Court observed that “*there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle..., not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community*” (§ 93). The Court recognised that Article 8 entails positive obligations for the State to facilitate the Gypsy way of life, particularly by considering their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases. According to the Court (§ 96):

“... although the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, such as the environment, it may have an incidence on the manner in which such laws are to be implemented”.

36. The Court applied these principles in the case of *Yordanova and Others v. Bulgaria*, where applicants described themselves as being of Roma origin, as well as in the case of *Winterstein and Others v. France*, where the applicants were travellers and alleged a violation of Article 8 of the Convention, on account of their eviction from land on which they had been settled for a long time. The Court explained in the *Winterstein* case that “*the present case also brings into play, in addition to the right to respect for one’s home, the applicants’ right to respect for their private and family life*” and reiterated that “*the occupation of a caravan is an integral part of the identity of travellers, even where they no longer live a wholly nomadic existence, and that measures affecting the stationing of caravans affect their ability to maintain their identity and to lead a private and family life in accordance with that tradition*” (*ibid.*, § 142). With regard to the circumstances of each case, the Court found that there was a violation of Article 8 in respect of all the applicants in these two cases (see also *Bagdonavicius and Others v. Russia*, 11 October 2016).

37. The Court also had to examine questions related to the cultural dimensions of marriage, for instance in a case dealing with the effects of Roma marriage for the purposes of survivor’s pension (*Muñoz Díaz*

v. Spain). The Court found that the refusal to pay survivor's pension to a member of the Roma community after the death of a man to whom she had been married according to the specific rites of their community for nineteen years amounted to a violation of Article 14 of the Convention (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property). The Court took into consideration the fact that the applicant belonged to a community within which the validity of the marriage, according to its own rites and traditions, had never been disputed or regarded as being contrary to public order by the Government. It stated in this regard: *"The Court takes the view that the force of the collective beliefs of a community that is well-defined culturally cannot be ignored"* (§ 59). The question of the well-defined cultural identity of Roma in Spain seems to have been an important factor: *"For the Court, it is necessary to emphasise the importance of the beliefs that the applicant derives from belonging to the Roma community – a community which has its own values that are well established and deeply rooted in Spanish society."* (§ 56)

38. In a case of alleged trafficking of a young Bulgarian girl of Roma origin in Italy, the Court, in dismissing the applicant's claims of having been held in slavery, noted, taking into account the very particular circumstances of the case, that *"even assuming that the applicant's father received a sum of money in respect of the alleged marriage, the Court is of the view that, in the circumstances of the present case, such a monetary contribution cannot be considered to amount to a price attached to the transfer of ownership, which would bring into play the concept of slavery. The Court reiterates that marriage has deep-rooted social and cultural connotations which may differ largely from one society to another. According to the Court, this payment can reasonably be accepted as representing a gift from one family to another, a tradition common to many different cultures in today's society."* (*M. and Others v. Italy and Bulgaria*, § 161).

39. In the case of *Z.H. and R.H. v. Switzerland*, the applicants, Afghan nationals, presented themselves to the Swiss asylum authorities as a married couple. According to the applicants, they had married in a religious ceremony in Iran, when the first applicant was 14 years old and the second applicant was 18 years old. The Swiss asylum authorities did not recognise their marriage, rejected their request for asylum and the second applicant was removed to Italy where he first registered as asylum seeker (while the first applicant was allowed to stay in Switzerland for the duration of her asylum application). In the appeal proceedings, domestic courts found, among other things, that the applicants' marriage was incompatible on grounds of public policy given that sexual intercourse with a child under the age of 16 was a criminal offence under Swiss law, and that they could not therefore claim any right to family life under Article 8 of the Convention. According to the Court, *"Article 8 of the Convention cannot be interpreted*

as imposing on any State party to the Convention an obligation to recognise a marriage, religious or otherwise, contracted by a 14 year old child. Nor can such obligation be derived from Article 12 of the Convention” (§ 44). “Bearing in mind the margin of appreciation afforded to States in immigration matters, the Court [found] that a fair balance has been struck between the competing interests at stake” and concluded that there was no violation of Article 8 (§§ 46-47).

40. In a case of racial abuse and threats directed against a member of the Roma community, the Court recalled that *“any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group’s sense of identity and the feelings of self-worth and self-confidence of members of the group. It is in this sense that it can be seen as affecting the private life of members of the group” (R.B. v. Hungary, § 78; see also Aksu v. Turkey [GC], § 58). “For the Court, the central issue of the complaint is that the abuse that occurred during ongoing anti-Roma rallies was directed against the applicant for her belonging to an ethnic minority. This conduct necessarily affected the applicant’s private-life, in the sense of ethnic identity, within the meaning of Article 8” (ibid., § 81).*

41. According to the Court, the authorities were required to take all reasonable steps to unmask any racist motive in the incident complained of and to establish whether or not ethnic hatred or prejudice may have played a role in it (*ibid.*, § 88). It concluded that the State failed to do so, which amounted to a violation of Article 8 of the Convention (*ibid.*, §§ 89-90).

42. Finally, the Court declared inadmissible the application of a grandmother (“the first applicant”, living in Poland) to whom was denied the request to have more contact rights with her grandson (“X”, living in Norway with foster parents). According to the Court, *“with regard to X’s cultural heritage, the Court recognises that the first applicant represents an important part of X’s linguistic and cultural ties to Poland. Such consideration does not necessarily lead to a conclusion that the Norwegian authorities were under an obligation to grant the first applicant extended contact rights, however. [...] It further appears from the facts that efforts were made by X’s foster parents to facilitate his need to maintain his cultural heritage [...] but that X had showed a rather limited interest in Polish linguistic and cultural activities. The interest in maintaining X’s Polish identity was expressly considered by the City Court, but did not, in its view, override the consideration of the best interests of the child. The Court accepts this conclusion.” (T.S. and J.J. v. Norway (dec.), § 30).*

43. Apart from the right to maintain a cultural or ethnic minority identity and to lead one’s life in accordance with that identity or tradition, with the positive obligations which it entails for the State, Article 8 of the Convention may also apply to the right to freely choose his or her own cultural or ethnic identity, and have that choice respected, where such right is based on objective grounds. For instance, in the case of *Ciubotaru*

v. Moldova, the Court examined the refusal by the Moldovan authorities to record the ethnic identity (“Romanian”) declared by the applicant, when dealing with his application to replace his Soviet identity card with a Moldovan identity card, on the ground that his parents were not recorded as “ethnic Romanians” on their birth and marriage certificates. The Court held that “an individual’s ethnic identity constitutes an essential aspect of his or her private life” under Article 8 and concluded that the Moldovan legislation and practice created insurmountable barriers for someone wishing to record an ethnic identity different from that recorded in respect of his or her parents by the Soviet authorities. Although the Court accepted that the authorities could refuse a claim to be officially recorded as belonging to a particular ethnicity where such a claim was based on purely subjective and unsubstantiated grounds, the legal practice in Moldova made it impossible for the applicant to present any objective evidence in support of his claim, such as verifiable links with the Romanian ethnic group (language, name, empathy and others, § 58). Some of these objective grounds which may characterise ethnicity or ethnic identity are shared language, religious faith or cultural and traditional origins and backgrounds (see the concept of ethnicity in the Grand Chamber judgment *Sejdić and Finci v. Bosnia and Herzegovina* [GC], § 43).

44. The Court has held that the refusal to permit a change of name, requested by the applicant to be in conformity with the culture he was raised in and through which he built his identity, amounted to a violation of his right to respect for private life (*Henry Kismoun v. France*: the applicant, with dual nationality, was only registered in France under his mother’s surname “Henry” who abandoned him when he was three years old and he wished to change it to “Kismoun”, the surname under which he was raised by his father in Algeria).

2. Right to religious identity

45. The Court has also been called upon to deal with cases concerning the right to religious identity. For instance, in the case of *Sinan Işık v. Turkey*, the applicant complained of the denial of his request to have “Islam” on his identity card replaced by the name of his faith, “Alevi”. The Court found a violation of Article 9 (freedom of religion), not on account of the refusal to indicate the “Alevi” faith on the applicant’s identity card but on the very fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional, which obliged the individual to disclose, against his or her will, information concerning an aspect of his or her religion or most personal convictions. Far from recognising the right to have the “Alevi” religious identity recorded on the identity card, the Court indicated that the deletion of the “religion” box on

identity cards could be an appropriate form of reparation of the violation found (§ 60).

46. Freedom of thought, conscience and religion, guaranteed by Article 9 of the Convention, is indeed an important right for minorities to maintain and preserve their identity, insofar as it protects manifestation of belief or religion with others both in the private and public spheres, in worship, teaching, practice and observance. Worship with others may be the most obvious form of collective manifestation. Access to places of worship and restrictions placed upon adherents' ability to take part in services or observances will give rise to Article 9 issues (see *Cyprus v. Turkey* [GC], §§ 241-247: restrictions on freedom of movement of Greek Cypriots living in northern Cyprus; see also the recent judgment in the case of *Association for solidarity with Jehovah Witnesses and Others v. Turkey*).

47. In the case of *Izzetin Doğan and Others v. Turkey* [GC], the applicants were followers of the Alevi faith, to whom the State authorities had refused to provide the same religious public service granted to the majority of citizens who are Sunni. They claimed that this refusal implied an assessment of their faith on the part of the authorities, in breach of the State's duty of neutrality and impartiality with regard to religious beliefs. The Grand Chamber found a violation of Article 9 taken alone and in conjunction with Article 14. It recalled that "*the right of a religious community to an autonomous existence is at the very heart of the guarantees in Article 9 of the Convention*" (§ 93). It found that the authorities' failure to recognise the religious nature of the Alevi faith (and of maintaining it within the banned Sufi orders) amounted to denying the Alevi community the recognition that would allow its members to "effectively enjoy" their right to freedom of religion in accordance with domestic legislation. In particular, the Court found that the impugned refusal denied the autonomous existence of the Alevi community and made it impossible for its members to use their places of worship and the titles of their religious leaders. The Court concluded that the authorities' interference with the right of the applicants, as Alevis, to freedom of religion had not been necessary in a democratic society (§ 135).

48. With regard to access to religious services or ministers for prisoners, the Court concluded that there was a breach of Article 9 by the Russian Federation in the case of a refusal to allow a prisoner to meet a priest (*Mozer v. the Republic of Moldova and Russia* [GC], §§ 197-199). In the case of an applicant under house arrest alleging that the restrictions accompanying his house arrest prevented him from attending Sunday Mass and thus infringed his right to manifest his religion, the Court concluded that there was no violation of Article 9. In examining the proportionality of the impugned restriction, it noted, firstly, that the very essence of the applicant's right to manifest his religion had not been impaired and, secondly, when requesting leave to attend Sunday Mass the applicant had

failed to specify the time and place of worship. The latter consideration had weighed heavily in the domestic authorities' decision to refuse leave. Having regard to the margin of appreciation available to the authorities, the Court saw no reason to disturb that finding (*Siveges v. Hungary*, §§ 151-157).

49. The failure to grant a religious community access to meat from animals slaughtered in accordance with religious prescriptions may involve an interference with the right to manifest one's religion in observance, within the meaning of Article 9 (*Cha'are Shalom Ve Tsedek v. France* [GC]: ritual slaughter to provide Jews with meat from animals slaughtered in accordance with religious prescriptions).

50. Likewise, the Court has held that the refusal of domestic courts to adjourn a hearing listed on a religious holiday may constitute an interference with a lawyer's freedom of religion (*Francesco Sessa v. Italy*). In that case, however, having regard, in particular, to the fact that the applicant was the complainant's lawyer whose presence was not indispensable at the hearing for the purpose of the proceedings and that, if need be, he could have had himself replaced by another lawyer for that particular hearing, the Court held that the assumed interference with the applicant's right to freedom of religion was proportionate to the legitimate aim pursued: good administration of justice and reasonable length of proceedings (§§ 36-37).

51. As regards restrictions placed by employers on the employees' ability to observe religious practice, the Court has held, with reference to the restrictive Commission case-law, that "*given the importance in a democratic society of freedom of religion, it considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate*" (see *Eweida and Others v. the United Kingdom*, § 83, which concerned the restriction on the visible wearing of a cross in the first and the second applicants' cases and in the case of the third and the fourth applicants the refusal to carry out certain of their duties with respect to same-sex couples).

52. The wearing of religious symbols is also protected by the right to manifest one's religion, although the Court has often recognised that State interferences in the form of prohibitions or restrictions are justified in order to defend the principles of secularism and gender equality. The Court found no violation of Article 9 in cases concerning the ban on wearing the Islamic headscarf at universities and schools (see *Leyla Şahin v. Turkey* [GC], § 116, and *Dogru v. France*, § 72) in public hospitals (see *Ebrahimian v. France*: non-renewal of the applicant's work contract based on her refusal to remove her veil in a public hospital), or concerning the authorities'

refusal to grant Muslim girls under the age of puberty an exemption from compulsory mixed swimming lessons on the ground of their religion (*Osmanoğlu and Kocabaş v. Switzerland*, not final yet). An application concerning the wearing of a religious sign in a courtroom was also communicated to the Belgian government (*Lachiri v. Belgium*). Concerning the wearing of religious symbols more broadly in public areas open to everyone, the Court considered that the criminal conviction of members of a religious group for wearing a turban, black tunic and a stick in public places outside a mosque amounted to a violation of Article 9 as it had not been based on sufficient reasons and was not necessary in a democratic society (*Ahmet Arslan and Others v. Turkey*). With regard to clothing concealing one's face (burka and niqab) and taking into account the wide margin of appreciation afforded to the State, the Court (Grand Chamber) found in the case of *S.A.S v. France*, that the ban on wearing such clothing in public could be regarded as “proportionate to the aim pursued, namely the preservation of the conditions of “living together” as an element of the “protection of the rights and freedoms of others” (*S.A.S. v. France* [GC], § 157), and therefore did not amount to a violation of Article 9 of the Convention. Nevertheless, the Court observed that the clothing in question “is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy” (*ibid.*, § 120) (see also the communicated cases *Belcacemi and Oussar v. Belgium*; *Dakir v. Belgium*).

3. Freedom of association with a cultural purpose

53. Freedom of association, guaranteed by Article 11 of the Convention, protects the right of persons belonging to minorities to form associations in order to promote their culture and their minority consciousness. In the case of *Sidiropoulos and Others v. Greece*, the Court dealt with the scope of protection enjoyed by associations whose aim was to promote the culture of a minority. The applicants claimed to be of “Macedonian” ethnic origin and to have a “Macedonian national consciousness”. They decided to form a non-profit association, called “Home of Macedonian Civilisation”. The association’s registration was refused by the national courts. The Court found a violation of Article 11. It noted that the aims of the association were exclusively to preserve and develop the traditions and folk culture of the Florina region. Such aims appeared to the Court to be perfectly clear and legitimate:

“the inhabitants of a region in a country are entitled to form associations in order to promote the region’s special characteristics, for historical as well as economic reasons” (§ 44).

54. The Court held that even supposing that the founders of an association like the one in the case asserted a minority consciousness, the

“*Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV)*” of 29 June 1990 and the “*Charter of Paris for a New Europe*” of 21 November 1990 – which Greece had signed – allowed them to form associations to protect their cultural and spiritual heritage (§ 44).⁴ In the case of *Gorzelik and Others v. Poland* [GC] (§ 92), the Court underlined the importance of freedom of association for persons belonging to national and ethnic minorities:

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

55. In developing these principles, the Court has stated that the right to express one’s views through freedom of association and the notion of personal autonomy underlie the right of everyone to express, in a lawful context, their beliefs about their ethnic identity (see *Tourkiki Enosi Xanthis and Others v. Greece*, § 56).

56. Finally, freedom of assembly, as enshrined in Article 11 of the Convention, also protects the right of persons belonging to minorities to hold peaceful meetings, for instance in commemoration of certain historical events to which they attach a particular significance (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*).

⁴ See also *Tourkiki Enosi Xanthis and Others v. Greece*, where the Court stated that even supposing that the real aim of the applicant association had been to promote the culture of a minority in Greece (Muslim minority of Thrace), this could not be said to constitute a threat to the territorial integrity of the country or public order. It added that the existence of minorities and different cultures in a country is a historical fact that a democratic society has to tolerate and even protect and support according to the principles of international law (§ 51).

IV. LINGUISTIC RIGHTS

57. According to the UN Committee on Economic, Social and Cultural Rights, the right of everyone to take part in cultural life, enshrined in Article 15 § 1 (a) of the International Covenant on Economic, Social and Cultural Rights, includes the right to express oneself in the language of one's choice.⁵ This may be particularly important for persons belonging to minorities, who have the right to preserve, promote and develop their own culture, including their language.

58. The Court has also dealt with linguistic rights, especially those of persons belonging to linguistic minorities and foreign citizens, under different rights guaranteed by the Convention. For instance, the spelling of surnames and forenames according to minority languages falls within the ambit of Article 8, which guarantees the right to respect for private and family life. Nevertheless, the Court has had a rather restrictive approach in this field, granting a wide margin of appreciation to the Contracting States in view of the existence of a multitude of factors of an historical, linguistic, religious and cultural nature in each country and the absence of a European common denominator (see *Mentzen v. Latvia* (dec.); *Bulgakov v. Ukraine*, §§ 43-44; *Baylac-Ferrer and Suarez v. France* (dec.)). It has recalled that linguistic freedom as such is not one of the rights and freedoms governed by the Convention, and that with the exception of the specific rights stated in Articles 5 § 2 (the right to be informed promptly, in a language which one understands, of the reasons for his or her arrest) and 6 § 3 (a) and (e) (the right to be informed promptly, in a language which one understands, of the nature and cause of the accusation against him or her and the right to have the assistance of an interpreter if he or she cannot understand or speak the language used in court), the Convention *per se* does not guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice. The Contracting States are in principle at liberty to impose and regulate the use of their official language or languages in identity papers and other official documents, for the purposes of linguistic unity. However, in *Güzel Erdagöz v. Turkey*, the Court found a violation of Article 8 on the ground that the Turkish courts had refused the applicant's request for rectification of the spelling of her forename according to its Kurdish pronunciation (she claimed to be called "Gözel", not "Güzel"), while noting the wide variety of linguistic origins of Turkish forenames. But the violation was mostly based on the fact that Turkish law did not indicate clearly enough the extent and manner in which the authorities use their discretion when it comes to imposing restrictions on and rectifying forenames. Conversely, in its judgment *Kemal Taşkın and Others v. Turkey*, the Court found no violation

⁵ General Comment no. 21, November 2009.

of Article 8, since the refusal to have the applicants' Turkish first names changed to Kurdish names was based on the fact that the names they had chosen contained characters which did not exist in the Turkish official alphabet. The Court declared inadmissible as manifestly ill-founded the application of a person of Somali origin who had requested national authorities to change the spelling of her maiden name in order to avoid taking on a humiliating meaning in Somali when pronounced according to the rules of "Western" pronunciation. The national authorities refused on account of the importance in Switzerland of the uniformity of surnames and the fact that the erroneous pronunciation did not produce a disparaging meaning in any of the Swiss national languages (*Macalin Moxamed Sed Dahir v. Switzerland* (dec.)).

59. Article 8 of the Convention may also apply to the right of prisoners to freedom of correspondence in their own language. In the case of *Mehmet Nuri Özen and Others v. Turkey*; see also *Çalan and Others v. Turkey*), the Court has found a violation of Article 8 on the ground that there was no legal basis for the refusal to dispatch prisoners' letters written in Kurdish. With this judgment, the Court adds to its previous and rather restrictive case-law on the issue. For instance, in *Senger v. Germany* (dec.), the Court had taken the view that the authorities' decision to stop letters in Russian from being sent to an inmate constituted an interference which was necessary for the prevention of disorder and crime, taking into account the fact that both the applicant and the authors of the letters had dual German and Russian nationality and that there were no compelling reasons for them to write in Russian (see in the same sense *Baybaşın v. the Netherlands* (dec), which concerned the wish of a prisoner to use "Kurmançî" in written and oral communication with close relatives in preference to Turkish). The Court also held that the restriction on Turkish prisoners to use Kurdish when calling their relatives on the phone amounted to a violation of their right to respect for family life. Indeed, "*the matter in issue relates not to the applicants' linguistic freedom as such but to their right to maintain meaningful contact with their families*" (*Nusret Kaya and Others v. Turkey*, § 54).

60. Linguistic rights may also be protected under the right to freedom of expression guaranteed by Article 10. For instance, in *Ulusoy and Others v. Turkey*, the Court found that the ban on a Kurdish production of a play in municipal buildings was in breach of freedom of expression. It also concluded that the ban on Kurdish language newspaper in Turkish prisons amounted to a violation of Article 10 (*Mesut Yurtsever and Others v. Turkey*).

61. Likewise, in *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, the Court found a breach of freedom of expression and freedom of association as guaranteed by Articles 10 and 11 of the Convention. In this case, proceedings were instituted to dissolve a trade union for education sector

employees on the grounds that one of the provisions of its constitution advocated education in a person's mother tongue. The proceedings resulted in the applicant union having to delete the impugned wording. The Court underlined that "*Article 10 encompasses the freedom to receive and impart information and ideas in any language which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds*" (§ 71).

62. As regards linguistic rights in the context of education, Article 2 of Protocol No. 1 (right to education) does not specify the language in which education must be conducted in order that the right to education should be respected (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, § 3, Series A no. 6). Furthermore, the right of parents to ensure such education in conformity with their own religious and philosophical convictions, as guaranteed by the second sentence of Article 2 of Protocol No. 1, does not cover linguistic preferences (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"*, cited above, § 6). The Court therefore excluded the right to obtain education in the language of one's choice (§ 11):

"11. In the present case the Court notes that Article 14, even when read in conjunction with Article 2 of the Protocol (Art. 14+P1-2), does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object of these two Articles (Art. 14+P1-2), read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. This is the natural and ordinary meaning of Article 14 read in conjunction with Article 2 (Art. 14+P1-2). Furthermore, to interpret the two provisions as conferring on everyone within the jurisdiction of a State a right to obtain education in the language of his own choice would lead to absurd results, for it would be open to anyone to claim any language of instruction in any of the territories of the Contracting Parties."

63. However, the Court found a violation of Article 2 of Protocol No. 1 in the inter-state case *Cyprus v. Turkey* (cited above), in respect of Greek Cypriots living in northern Cyprus in so far as no Greek-language secondary-school facilities were available to them, after having completed their primary schooling in Greek language (§§ 273-280). In *İrfan Temel and Others v. Turkey*, the Court found a violation of Article 2 of Protocol No. 1 on account of the suspension of eighteen students from university for two terms as a disciplinary measure for having requested the introduction of optional Kurdish language classes in the university.

64. In the case of *Catan and Others v. Moldova and Russia*, the Court was called upon to rule on the restrictions on Moldovan-language schools using the Latin script in Transnistria. The Court, having regard to the fact that the schools in question were at all times registered with the Moldovan

Ministry of Education, using a curriculum set by that Ministry and providing teaching in the first official language of Moldova, found that the forced closure of the schools as a result of the Moldovan Republic of Transdniestria “MRT” Law on Languages, and the subsequent measures of harassment, constituted interferences with the applicant pupils’ rights of access to educational institutions existing at a given time and to be educated in their national language. It also considered that these measures amounted to an interference with the applicant parents’ rights to ensure their children’s education and teaching was in accordance with their philosophical convictions. The Court found no evidence that the measures taken by the “MRT” authorities in respect of these schools pursued a legitimate aim and that Russia, by virtue of its continued military, economic and political support for the “MRT”, was responsible under the Convention for the violation of the applicants’ right to education. By contrast, in respect of Moldova, it considered that it had fulfilled its positive obligations in respect of the applicants. In this connection, it noted that the Government had made considerable efforts to support the applicants, for example, by paying for the rent and refurbishment of the schools’ new premises and paying for all equipment, staff salaries and transport costs, thereby enabling the schools to continue operating and the children to continue learning in Moldovan, albeit in far from ideal conditions.

65. Linguistic rights in a political or institutional context have also been vindicated before the Court. For instance, in *Podkolzina v. Latvia*, the Court dealt with the striking of a candidate – member of the Russian-speaking minority – from a list for parliamentary elections, due to insufficient knowledge of the official language. The Court found a violation of Article 3 of Protocol No. 1 (right to free elections) on the ground that the procedure followed for striking the applicant from the list was incompatible with the Convention’s procedural requirements of fairness and legal certainty. However, as regards the legitimate aim of the measure, the Court observed that the obligation in domestic law for candidates to the national Parliament to have an adequate command of the official language pursued a legitimate aim, given the margin of appreciation enjoyed by States in this area. Every State has a legitimate interest in ensuring that its institutional system functions properly and the Court was not required to reach an opinion on the choice of the working language of a national parliament. This choice was dictated by historical and political considerations unique to each State and in principle formed part of that State’s exclusive area of competence (§ 34). The Court has applied this jurisprudence with regard to the use of regional languages in regional parliamentary assemblies. In its decision *Birk-Lévy v. France* (dec.), concerning the quashing by the *Conseil d’Etat* of a resolution passed by the Assembly of French Polynesia allowing the use of a language other than French (namely Tahitian) in the Assembly, the Court stated:

« (...) Même si la loi organique reconnaît la langue tahitienne comme « *élément fondamental de l'identité culturelle* », la Cour considère, eu égard au principe de respect des particularités nationales des États quant à leur propre système institutionnel (*Podkolzina*, précité), que la revendication de la requérante du droit de pouvoir de se servir de la langue tahitienne au sein de l'Assemblée de la Polynésie française sort du cadre de la Convention et en particulier de l'Article 10. Partant, l'examen du grief échappe à sa compétence *ratione materiae*, et doit être rejeté conformément à l'Article 35 §§ 3 et 4 de la Convention. »

66. In *Demirbaş and Others v. Turkey* (dec.), the Court declared inadmissible the applications lodged in a personal capacity by municipal councillors complaining about the dissolution of the council for using non-official languages (among others, Kurdish) in its activities and services. The Court did not examine the merits of the complaint since it considered that the applications were incompatible *ratione personae*, on the ground that neither local authorities nor any other government bodies may lodge applications with the Court through the individuals who make them up or represent them.⁶

67. In a case concerning linguistic rights in the context of election campaigns (the applicants were convicted of having spoken Kurdish during an election campaign pursuant to a provision in the electoral code which prohibited at the material time the use of any other language other than Turkish in election campaigns), the Court found a breach of the applicants' right to freedom of expression (*Şükran Aydın and Others v. Turkey*). It considered that the case before it did not concern the use of unofficial language in the context of communications with public authorities or before official institutions but rather the imposition of a linguistic restriction on persons in their relations with other private individuals, albeit in the context of public meetings during election campaigns (§ 52). For the Court, in principle, States were entitled to regulate the use of languages by candidates and other persons during election campaigns and, if need be, impose certain reasonable restrictions. It found, however, that a regulatory framework consisting of a total prohibition on the use of unofficial languages coupled with criminal sanctions to be incompatible with the essential values of a democratic society, such as freedom of expression as guaranteed by Article 10 of the Convention (§ 55). In particular, it held: "*having regard to the specific context of elections and to the fact that free elections are inconceivable without the free circulation of political opinions and information, the Court considers that the right to impart one's political views and ideas and the right of others to receive them would be meaningless, if the possibility to use the language which could properly*

⁶ According to the Court's case-law on Article 34 of the Convention, governmental bodies, regional governments or municipalities do not have *locus standi* to lodge an application with the Court. Article 34 circumscribes this right to persons, non-governmental organisations and groups of individuals.

convey these views and ideas was diminished due to the threat of criminal sanctions” (ibid). The Court confirmed this approach in *Semir Güzel v. Turkey*. The applicant was chairman of a general congress of a political party and deliberately failed to intervene to prevent delegates from expressing themselves in Kurdish. His conduct was considered a form of expression to be protected by Article 10 of the Convention. The Court further held that the relevant law was not clear enough to have enabled the applicant to foresee that he would face criminal proceedings and accordingly, the interference with his freedom of expression was not prescribed by law. It therefore concluded that there had been a violation of Article 10 of the Convention (§§ 39-41).

V. RIGHT TO EDUCATION

68. The concepts of education and teaching were defined by the Court in the case of *Campbell and Cosans v. the United Kingdom* (§ 33) as follows:

“the education of children is the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young, whereas teaching or instruction refers in particular to the transmission of knowledge and to intellectual development”.

69. The general content of Article 2 of Protocol No. 1 was specified in connection with one of the first cases which the Court had to determine: the one known as the *Belgian Linguistic Case (Case “relating to certain aspects of the laws on the use of languages in education in Belgium”* (merits), cited):

“3. (...) The negative formulation indicates, as is confirmed by the "preparatory works" (especially Docs. CM/WP VI (51) 7, page 4, and AS/JA (3) 13, page 4), that the Contracting Parties do not recognise such a right to education as would require them to establish at their own expense, or to subsidise, education of any particular type or at any particular level. However, it cannot be concluded from this that the State has no positive obligation to ensure respect for such a right as is protected by Article 2 of the Protocol (P1-2). As a "right" does exist, it is secured, by virtue of Article 1 (Art. 1) of the Convention, to everyone within the jurisdiction of a Contracting State.

(...) There neither was, nor is now, therefore, any question of requiring each State to establish such a system, but merely of guaranteeing to persons subject to the jurisdiction of the Contracting Parties the right, in principle, to avail themselves of the means of instruction existing at a given time.

The Convention lays down no specific obligations concerning the extent of these means and the manner of their organisation or subsidisation. ...

5. The right to education guaranteed by the first sentence of Article 2 of the Protocol (P1-2) by its very nature calls for regulation by the State, regulation which may vary

in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention.”

70. The question of whether Article 2 of Protocol No. 1 applies to higher and university education was raised in the case of *Leyla Şahin v. Turkey*, cited, where the Court concluded as follows (§§ 136-137):

“136. (...) While the first sentence of Article 2 essentially establishes access to primary and secondary education, there is no watertight division separating higher education from other forms of education. In a number of recently adopted instruments, the Council of Europe has stressed the key role and importance of higher education in the promotion of human rights and fundamental freedoms and the strengthening of democracy (see, *inter alia*, Recommendation No. R (98) 3 and Recommendation 1353 (1998) – cited in paragraphs 68 and 69 above). As the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (see paragraph 67 above) states, higher education “is instrumental in the pursuit and advancement of knowledge” and “constitutes an exceptionally rich cultural and scientific asset for both individuals and society”.

137. Consequently, it would be hard to imagine that institutions of higher education existing at a given time do not come within the scope of the first sentence of Article 2 of Protocol No. 1. Although that Article does not impose a duty on the Contracting States to set up institutions of higher education, any State doing so will be under an obligation to afford an effective right of access to them. (...)”⁷”

71. Nevertheless, Article 2 of Protocol No. 1 “*permits limiting access to universities to those who duly applied for entrance and passed the examination*” (*Lukach v. Russia* (dec.)), as well as the application of a *numerus clausus* (*Tarantino and Others v. Italia*).

72. Finally, the Court held that, although Article 2 of Protocol No. 1 does not oblige States to organise educational facilities for prisoners where such facilities are not already in place, an access to education when it exists should not be subjected to arbitrary and unreasonable restrictions (*Velyo Velev v. Bulgaria*).

73. The second sentence of Article 2 of Protocol No. 1 enjoins the State to respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. The Court has been confronted with a wide range of situations concerning this aspect of Article 2 of Protocol No. 1. In *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, a case in which the applicants maintained that sex education lessons organised in Danish state schools had offended the

⁷ In that connection, the Court has also held that the right of access to higher education is a civil right within the meaning of Article 6 of the Convention (right to a fair trial): *Emine Araç v. Turkey*, no. 9907/02, 23 September 2008.

religious feelings of some parents, the Court stated (§ 53, judgment of 7 December 1976):

“It follows in the first place from the preceding paragraph that the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. In particular, the second sentence of Article 2 of the Protocol does not prevent States from imparting through teaching or education, information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature.”

74. For compulsory ethics classes that offended some parents’ religious sentiments, see *Appel-Irrgang v. Germany* (dec.). In other cases, there was the question of religious teaching based on a Sunni interpretation of Islam clashing with religious convictions of parents of Alevi faith (*Hasan and Eylem Zengin v. Turkey*; *Mansur Yalçın and Others v. Turkey*) or of religious teaching on Christianity clashing with philosophical convictions of non-Christian parents (*Folgerø and Others v. Norway* [GC]). The test applied by the Court in all these cases is the following: the State, in fulfilling the functions assumed by it in regard to education and teaching, must ensure that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. If this is not the case, the State authorities are under an obligation to grant children full exemption from the lessons in accordance with the parents’ religious or philosophical convictions (see *Folgerø*, see below, § 102). However, Article 2 of Protocol No. 1 does not compel the State to provide ethics classes in case of exemption (see *Grzelak v. Poland*, § 105).

75. In *Lautsi v. Italy* [GC], where the applicants complained about the presence of crucifixes in Italian State-schools classrooms, the Court re-affirmed the principle that the obligation on the member States to respect the religious and philosophical convictions of parents did not apply only to the content of teaching and the way it was provided; it bound them “*in the exercise*” of all the “*functions*” which they assumed in relation to education and teaching. For the Court that included without any doubt the organisation of the school environment where domestic law attributes that function to the public authorities (§ 63). In the particular circumstances of this case, the Court concluded that the authorities had acted within the limits of the margin of appreciation left to Italy in the context of its obligation to respect the right of parents to ensure such education and teaching in conformity

with their own religious and philosophical convictions and that there had been no violation of Article 2 of Protocol No. 1 (see *Lautsi v. Italy* [GC], §§ 70-78).

76. In the case of *Osmanoğlu and Kocabaş v. Switzerland*, not final (concerning the authorities' refusal to grant Muslim girls under the age of puberty an exemption from compulsory mixed swimming lessons on the ground on their religion), the Court applied under Article 9, principles borrowed from its case-law under Article 2 of Protocol No. 1 (which Switzerland had not ratified). Indeed, the Court recalled that Article 2 of Protocol No. 1 is considered as a *lex specialis* in relation to Article 9 of the Convention in the area of education and teaching (§§ 90-93). It therefore relied on the former principles in order to determine, among other things, the scope of the authorities' margin of appreciation – wide in the Court's view - and whether a fair balance had been struck between the applicants' Article 9 rights and the aims which the impugned restriction sought to achieve. In the end, the Court held that the national authorities had not exceeded their margin of appreciation and concluded that there was no violation of Article 9.

77. Finally, it should be stressed that the second sentence of Article 2 of Protocol No. 1 does not prevent the State from establishing compulsory schooling, be it in State schools or through private tuition of a satisfactory standard (see *Konrad and Others v. Germany* (dec.), where the Court rejected as manifestly ill-founded an application brought by parents wishing to educate their children at home).

VI. RIGHT TO THE PROTECTION OF CULTURAL AND NATURAL HERITAGE

78. The Court has never recognised the right to the protection of cultural and natural heritage as such, and stated in a recent decision that “*the applicant has failed to point to any case of this Court where it has held that Article 8 gives rise to a general right to protection of cultural heritage of the nature contended for in the present case*” (*Sylogos Ton Athinaion v. The United Kingdom* (dec.), where an association was seeking the return of Parthenon Marbles to Greece, removed from this country in the early nineteenth century). Nevertheless, the Court has accepted that the protection of cultural heritage is a legitimate aim that the State may pursue when interfering with individual rights, especially with the right to property enshrined in Article 1 of Protocol No. 1.

79. For instance, in the case of *Beyeler v. Italy* [GC], the applicant complained of the exercise by the Italian Ministry of Cultural Heritage of its right of pre-emption over a Van Gogh painting that he had bought through

an antiques dealer in Rome. Although the Court found a violation of the right to property for the lack of fair balance in the way in which the right of pre-emption was exercised (much later than the invalid sale and creating a situation of uncertainty), the Court considered that the control by the State of the market in works of art is a “*legitimate aim*” for the purposes of protecting a country’s cultural and artistic heritage (§ 112). As regards works of art of foreign artists, the Court recognised that, in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations, it is legitimate for a State to take measures designed to facilitate, in the most effective way, wide public access to them, in the general interest of universal culture (§ 113). The Court referred to the concept of “*universal culture*” and “*cultural heritage of all nations*” and linked it to the right of the public to have access to it (see above, Access to culture, II).

80. In *Debelianovi v. Bulgaria*, the applicants had obtained a court order for the return of a house that had belonged to their father and had been turned into a museum in 1956 after expropriation. The building in question was regarded as the most important historic and ethnographical monument in the town. The National Assembly introduced a moratorium on restitution laws with regard to properties classified as national cultural monuments. On the basis of this moratorium, the courts dismissed an appeal by the applicants seeking to secure effective possession of the property. Although the Court found a violation of Article 1 of Protocol No. 1, on the ground that the situation had lasted for more than 12 years and the applicants had obtained no compensation, it held that the purpose of the moratorium was to ensure the preservation of protected national heritage sites, which was a legitimate aim in the context of protecting a country’s cultural heritage. The Court referred to the Council of Europe’s Framework Convention on the Value of Cultural Heritage for Society.

81. In its Grand Chamber judgment *Kozacıoğlu v. Turkey* [GC], the Court held that the failure to take special architectural or historical characteristics of a listed building into account when assessing the compensation for its expropriation amounted to a violation of Article 1 of Protocol No. 1, in so far as it had imposed an excessive and disproportionate burden on the applicant. The Grand Chamber took the opportunity to outline the importance of the protection of cultural heritage, when assessing the legitimate aim of the interference:

“53. The Court also considers that the protection of a country’s cultural heritage is a legitimate aim capable of justifying the expropriation by the State of a building listed as “*cultural property*”. It reiterates that the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court will respect the legislature’s judgment as to what is “*in the public interest*” unless that judgment is manifestly without reasonable foundation (see *James and Others*, cited

above, § 46, and *Beyeler*, cited above, § 112). This is equally true, *mutatis mutandis*, for the protection of the environment or of a country's historical or cultural heritage.

54. The Court points out in this respect that the conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities (see, *mutatis mutandis*, *Beyeler*, cited above, § 112; *SCEA Ferme de Fresnoy v. France* (dec.), no. 61093/00, ECHR 2005-XIII; and *Debelianovi v. Bulgaria*, no. 61951/00, § 54, 29 March 2007; see also, *mutatis mutandis*, *Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-...). In this connection the Court refers to the Convention for the Protection of the Architectural Heritage of Europe, which sets out tangible measures, specifically with regard to the architectural heritage (see paragraph 30 above)."

82. Furthermore, concerning the level of compensation required, the Court recalled that legitimate objectives of "*public interest*" may call for less than reimbursement of the full market value of the expropriated property. The Court took the view that the protection of the historical and cultural heritage is one such objective (§§ 64 and 82).

83. In the case of *Ehrmann and SCI VHI v. France* (dec.), the Court held that ensuring "*the quality of the environment surrounding protected national heritage structures*" was "*a legitimate aim for the purposes of protecting a country's cultural heritage*" (see *supra* I. 1. for further developments on this case).

84. The Court has stressed a number of times the importance of the protection of natural heritage in cases of property rights, while referring to the larger notion of environment (see, for instance, the protection of forests in *Hamer v. Belgium*, and *Turgut and Others v. Turkey*, § 90; or the protection of coastal areas in *Depalle v. France* [GC], § 81). In all these cases, the protection of the environment or natural heritage was considered to be a legitimate aim for the interference with the right to property. However, the Court can also be confronted with the protection of natural heritage and resources as a right vindicated by persons belonging to national minorities or indigenous peoples as part of their right to peaceful enjoyment of their possessions. For instance, in *Hingitaq 53 and Others v. Denmark* (dec.), the applicants, members of the Inughuit tribe in Greenland complained that as a consequence of their forced relocation following the establishment of a US Air Base, they had been deprived of their homeland and hunting territories and denied the opportunity to use, enjoy and control their land. Taking into account the compensation given by the Danish courts for the eviction and loss of hunting rights, the Court declared the complaint manifestly ill-founded.

VII. RIGHT TO SEEK HISTORICAL TRUTH

85. The Court has held that it is an integral part of freedom of expression (protected by Article 10 of the Convention) to seek historical truth and it is not its role to arbitrate the underlying historical issues, which are part of a continuing debate between historians that shapes opinion as to the events which took place and their interpretation (*Chauvy and Others v. France*, § 69). It has also referred to the efforts that every country must debate its own history openly and dispassionately (*Monnat v. Switzerland*, § 64). The Court examines however whether the issue belongs to the category of clearly established historical facts – such as the Holocaust –negation or revision of which is removed from the protection of Article 10 by Article 17 of the Convention (prohibition of abuse of rights: see *Lehideux and Isorni v. France*, § 51, and *Garaudy v. France* (dec)). In *Garaudy*, the Court stated as follows:

“There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims themselves of falsifying history. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them. The denial or rewriting of this type of historical fact undermines the values on which the fight against racism and anti-Semitism are based and constitutes a serious threat to public order. Such acts are incompatible with democracy and human rights because they infringe the rights of others. Their proponents indisputably have designs that fall into the category of aims prohibited by Article 17 of the Convention.”

86. The Court may also take into account the passage of time in assessing whether the interference is compatible with freedom of expression, for instance in cases concerning the actions of senior government officials and politicians (see *Monnat*, cited above, § 64: historical report concerning Switzerland’s position during Second World War shown on a national television channel). The lapse of time means that it is not appropriate to judge the expressions in the present with the same degree of severity that might have been justified in the past. In applying these principles, the Court has found a violation of Article 10 in cases concerning the conviction of the publishers of a book describing torture and summary executions in the Algerian War (*Orban and Others v. France*), and the obligation to publish a rectification of an Article in a weekly paper in which the applicant had criticised a third person for paying tribute to a former Prime Minister who had been involved in the passing of anti-Semitic legislation (*Karsai v. Hungary*).

87. With regard to the Turkish-Armenian conflict and the events of 1915, the Court found a violation of Article 10 in the conviction of a

journalist (who was subsequently killed) for denigrating Turkish identity by expressing his views on these events (*Dink v. Turkey*). In *Perinçek v. Switzerland* [GC], the Court (Grand Chamber) also found a breach in the applicant's freedom of expression for being convicted for stating in public that "the allegations of the 'Armenian genocide' are an international lie". The Court stated as follows:

“280. Taking into account all the elements analysed above – that the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance, that the context in which they were made was not marked by heightened tensions or special historical overtones in Switzerland, that the statements cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland, that there is no international law obligation for Switzerland to criminalise such statements, that the Swiss courts appear to have censured the applicant for voicing an opinion that diverged from the established ones in Switzerland, and that the interference took the serious form of a criminal conviction – the Court concludes that it was not necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the present case.”

88. Finally, the judgment *Kenedi v. Hungary* (§ 43), introduces a new aspect of the right to seek historical truth in that the Court emphasises that access to original documentary sources for legitimate historical research is an essential element of the exercise of the right to freedom of expression. The case involved the refusal to grant a historian access to documents concerning the communist era in Hungary (on the functioning of the Hungarian State Security Service).

VIII. RIGHT TO ACADEMIC FREEDOM

89. Under Article 10 of the Convention, the Court has underlined the importance of academic freedom, which “*comprises the academics' freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction*” (*Sorguç v. Turkey*, § 35, where a university lecturer was ordered to pay damages for having, at a scientific conference, distributed a document criticising the procedures for recruiting and promoting assistant lecturers and where the Court found a violation of Article 10; see also *Hasan Yazıcı v. Turkey*, § 55, where the applicant, an academic and former head of the ethics committee of the Turkish Academy of Sciences, was ordered to pay damages for defamation of another prominent academic who he had accused of plagiarism). The Court has also stated that academic freedom “*is not restricted to academic or scientific research... This may include an examination of the functioning of public institutions in a given*

political system, and a criticism thereof’ (*Mustafa Erdoğan and Others v. Turkey*, § 40, where the applicants were ordered to pay damages for defamation on account of the publication of an article written by the first applicant, a constitutional law professor, criticising a decision of the Constitutional Court). The importance of academic freedom has also been stressed in relation to the seizure of a book which reproduced a doctoral thesis on the ‘star’ phenomenon. The seizure was ordered by a court on the ground that it infringed the personality rights of a very well-known pop singer, see *Sapan v. Turkey*, (application no. 44102/04).

90. The Court found no violation of Article 8 of the Convention in the case of *Aksu v. Turkey* [GC] where the applicant claimed that parts of an academic book and definitions in two dictionaries about Roma were offensive and discriminatory, since, in the particular circumstances of the case, the authorities had taken all the necessary steps to comply with their obligation under that Article to protect the applicant’s effective right to respect for his private life as a member of the Roma Community. In this connection, the Court took into account the fact that the domestic courts had applied the principles laid down in the Court’s case-law, notably, regarding academic freedom (§ 71 and § 83).

91. The case of *Cox v. Turkey* addresses a new aspect of academic freedom of expression, namely its consequences for leave for a foreign university lecturer to enter and remain in a Contracting State. The applicant, an American lecturer who had taught on several occasions in Turkish universities and had expressed opinions on Kurdish and Armenian questions, was banned from re-entering Turkey on the ground that she would undermine ‘national security’. The Court found a violation of Article 10 of the Convention.

92. Freedom of academic expression protected by Article 10 also entails procedural safeguards for professors and lecturers. In *Lombardi Vallauri v. Italy*, the Council of the Law Faculty of the *Sacro Cuore* Catholic University of Milan refused to consider a job application by a lecturer who had taught legal philosophy there for more than twenty years on annual renewable contracts, on the ground that the Congregation for Catholic Education (a body of the Holy See) had not given its approval and instead had simply noted that certain statements by the applicant were “clearly at variance with Catholic doctrine”. The Court observed that the Faculty Council had not informed the applicant, nor made an assessment, of the extent to which the allegedly unorthodox opinions he was accused of holding were reflected in his teaching activities, or of how they might, as a result, affect the university’s interest in providing an education based on its own religious beliefs. Furthermore, the administrative courts had limited their examination of the legitimacy of the impugned decision to the Faculty Council’s noting of the existence of a decision by the Congregation and refused in this way to call into question the non-disclosure of the applicant’s

allegedly unorthodox opinions. They also omitted to consider the fact that the lecturer's ignorance of the reasons for his dismissal precluded any possibility of adversarial proceedings. The Court therefore concluded that the university's interest in providing an education based on Catholic doctrine could not extend so far as to impair the very essence of the procedural safeguards inherent in Article 10.

93. Finally, in *Gillberg v. Sweden* [GC], the Court found that the applicant, a professor, did not have a “*negative*” right within the meaning of Article 10 to refuse to make the research material belonging to his public employer available (the applicant was convicted for misuse of office in his capacity as a public official, for refusing to comply with court judgments granting access to two named individuals, under specified conditions, to a research conducted by the University of Gothenburg).

ANNEX: LIST OF JUDGMENTS AND DECISIONS

- *Ahmet Arslan and Others v. Turkey**, no. 41135/98, 23 February 2010
- *Ahmet Yildirim v. Turkey**, no. 3111/10, ECHR 2012
- *Akdas v. Turkey**, no. 41056/04, 16 February 2010
- *Akdeniz v. Turkey** (dec.), no. 20877/10, 11 March 2014
- *Aksu v. Turkey*, [GC], no. 4149/04 and 41029/04, ECHR 2012
- *Alinak v. Turkey*, no. 40287/98, 29 March 2005
- *Almeida Leitão Bento Fernandes v. Portugal**, no. 25790/11, 12 March 2015
- *Alves Da Silva v. Portugal**, no. 41665/07, 20 October 2009
- *Appel-Irrgang v. Germany** (dec.), no. 45216/07, ECHR 2009
- *Ashby Donald and Others v. France**, no. 36769/08, 10 January 2013
- *Association for solidarity with Jehovah Witnesses and Others v. Turkey**, nos. 36915/10 and 8606/13, 25 May 2016
- *Bagdonavicius and Others v. Russia**, no. 19841/06, 11 October 2016
- *Baybasin v. the Netherlands* (dec.), no. 13600/02, 6 October 2005
- *Baylac-Ferrer and Suarez v. France** (dec.), no. 27977/04, 25 September 2008
- *Belcacemi and Oussar v. Belgium**, no. 37798/13 (case communicated on 9 June 2015)
- *Beyeler v. Italy* [GC], no. 33202/96, ECHR 2000-I
- *Birk-Levy v. France** (dec.), no. 39426/06, 21 September 2010
- *Bohlen v. Germany**, no. 53495/09, 19 February 2015
- *Boulois v. Luxembourg* [GC], no. 37575/04, ECHR 2012
- *Bulgakov v. Ukraine*, no. 59894/00, 11 September 2007
- *Çalan and Others v. Turkey**, nos 53658/07, 19227/08 35095/08, 14 April 2015
- *Campbell and Cosans v. the United Kingdom*, 25 February 1982, Series A no. 48
- *Case relating to certain aspects of the laws on the use of languages in education in Belgium* (merits), 23 July 1968, Series A no. 6
- *Catan and Others v. Moldova and Russia* [GC], nos. 43770/04 and others, ECHR 2012
- *Catholic Archdiocese of Alba Iulia v. Romania**, no. 33003/03, 25 September 2012
- *Cengiz and others v. Turkey**, nos. 48226/10 and 14027/11, ECHR 2015
- *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, ECHR 2000-VII

* The text is only available in French.

- *Chapman v. the United Kingdom* [GC], no. 27238/95, ECHR 2001-I
- *Chauvy and Others v. France*, no. 64915/01, ECHR 2004-VI
- *Ciubotaru v. Moldova*, no. 27138/04, 27 April 2010
- *Cox v. Turkey*, no. 2933/03, 20 May 2010
- *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV
- *Dakir v. Belgium**, no. 4619/12 (case communicated on 9 July 2015)
- *Debelianovi v. Bulgaria**, no. 61951/00, 29 March 2007
- *Demirbas and Others v. Turkey** (dec.), nos. 1093/08 and Others, 9 November 2010
- *Depalle v. France* [GC], no. 34044/02, ECHR 2010
- *Dink v. Turkey**, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010
- *Dogru v. France*, no. 27058/05, 4 December 2008
- *Ebrahimian v. France**, no. 64846/11, ECHR 2015
- *Eğitim ve Bilim Emekçileri Sendikası v. Turkey**, no. 20641/05, ECHR 2012
- *Ehrmann and SCI VHI v. France** (dec.), no. 2777/10, 7 June 2011
- *Ernst August Von Hannover v. Germany**, no. 53649/09, 19 February 2015
- *Eweida and Others v. the United Kingdom*, nos. 48420/10, 59842/10, 51671/10 and 36516/10, ECHR 2013
- *Folgerø and Others v. Norway* [GC], no. 15472/02, ECHR 2007-III
- *Francesco Sessa v. Italy**, no. 28790/08, ECHR 2012
- *Garaudy v. France* (dec.), no. 65831/01, ECHR 2003-IX
- *Gillberg v. Sweden* [GC], no. 41723/06, 3 April 2012
- *Gorzelik and Others v. Poland* [GC], no. 44158/98, ECHR 2004-I
- *Grzelak v. Poland*, no. 7710/02, 15 June 2010
- *Güzel Erdagöz v. Turkey**, no. 37483/02, 21 October 2008
- *Hamer v. Belgium**, no. 21861/03, ECHR 2007-V
- *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, 9 October 2007
- *Hasan Yazıcı v. Turkey*, no. 40877/07, 15 April 2014
- *Henry Kismoun v. France**, no. 32265/10, 5 December 2013
- *Hingitaq 53 and Others v. Denmark* (dec.), no. 18584/04, ECHR 2006-I
- *Irfan Temel and Others v. Turkey*, no. 36458/02, 3 March 2009
- *Izzetin Doğan and Others v. Turkey* [GC], no. 62649/10, ECHR 2016
- *Jankovskis v. Lithuania*, no. 21575/08, 17 January 2017 (not final)

- *Jelševar and Others v. Slovenia* (dec.), no. 47318/07, 11 March 2014
- *Kalda v. Estonia*, no. 17429/10, 19 January 2016
- *Karataş v. Turkey* [GC], no. 23168/94, ECHR 1999-IV
- *Karsai v. Hungary*, no. 5380/07, 1 December 2009
- *Kenedi v. Hungary*, no. 31475/05, 26 May 2009
- *Kemal Taşkın and Others v. Turkey**, nos. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05, 2 February 2010
- *Khurshid Mustafa and Tarzibachi v. Sweden*, no. 23883/06, 16 December 2008
- *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, nos. 5095/71, 5920/72 and 5926/72, 7 December 1976, Series A no. 23
- *Konrad and Others v. Germany* (dec.), no. 35504/03, ECHR 2006-XIII
- *Kozacıoğlu v. Turkey* [GC], no. 2334/03, 19 February 2009
- *Lachiri v. Belgium**, no. 3413/09 (case communicated on 9 October 2015)
- *Laduna v. Slovakia*, no. 31827/02, ECHR 2011
- *Lautsi v. Italy* [GC], no. 30814/06, ECHR 2011
- *Lehideux and Isorni v. France* [GC], no. 24662/94, 23 September 1998, Reports 1998-VII
- *Leyla Sahin v. Turkey* [GC], no. 44774/98, ECHR 2005-XI
- *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, ECHR 2007-IV
- *Lombardi Vallauri v. Italy**, no. 39128/05, 20 October 2010
- *Lukach v. Russia* (dec.), no. 48041/99, 16 November 1999
- *M. and Others v. Italy and Bulgaria*, no. 40020/03, 31 July 2012
- *M'Bala M'Bala v. France* (dec.), no. 25239/13, ECHR 2015
- *Macalin Moxamed Sed Dahir v. Switzerland** (dec.), no. 12209/10, 15 September 2015
- *Mansur Yalçın and Others v. Turkey*, no. 21163/11, 16 September 2014
- *Mehmet Nuri Özen and Others v. Turkey**, nos. 15672/08, 24462/08, 27559/08, 28302/08, 28312/08, 34823/08, 40738/08, 41124/08, 43197/08, 51938/08 and 58170/08, 11 January 2011
- *Mentzen v. Latvia* (dec.), no. 71074/01, ECHR 2004-XII
- *Mesut Yurtsever and Others v. Turkey*, nos. 14946/08, 21030/08, 24309/08 and others, 20 January 2015
- *Monnat v. Switzerland*, no. 73604/01, ECHR 2006-X
- *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, ECHR 2016
- *Müller and Others v. Switzerland*, no. 10737/84, 24 May 1988, Series A no. 133
- *Muñoz Diaz v. Spain*, no. 49151/07, ECHR 2009
- *Mustafa Erdoğan and Others v. Turkey*, nos. 346/04 and 39779/04, 27 May 2014

- *Neij and Sunde Kolmisoppi v. Sweden*, (dec.), no.40397/12, 19 February 2013
- *Nusret Kaya and Others v. Turkey*, nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08, ECHR 2014
- *Orban and Others v. France**, no. 20985/05, 15 January 2009
- *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, 10 January 2017 (not final)
- *Otto-Preminger-Institut v. Austria*, no. 13470/87, 20 September 1994, Series A no. 295-A
- *Palomo Sánchez and others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, ECHR 2011
- *Perinçek v. Switzerland* [GC], no. 27510/08, ECHR 2015
- *Podkolzina v. Latvia*, no. 46726/99, ECHR 2002-II
- *R.B. v. Hungary*, no. 64602/12, 12 April 2016
- *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014
- *Sapan v. Turkey**, no. 44102/04, 8 June 2010
- *Sargsyan v. Azerbaijan* [GC], no. 40167/06, ECHR 2015
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* The text is only available in French.

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Annex

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- *Winterstein and Others v. France**, no. 27013/07, 17 October 2013
- *Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012
- *Z.H. and R.H. v. Switzerland*, no. 60119/12, 8 December 2015