COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 16 July 2015 CDDH(2015)R83 Addendum

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

_____

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

Table of Contents

1. Introduction

[1.] The present compilation was prepared in response to a proposal stemming from a thematic debate in the Council of Europe's Committee of Ministers, in December 2012, on "freedom of religion and the situation of religious minorities"[1]. The aim of the compilation is to provide a comprehensive overview of all the existing Council of Europe standards relating to the principles of freedom of thought, conscience and religion and the links to other rights contained in the European Convention on Human Rights as well as the jurisprudence of the European Court of Human Rights interpreting these rights. The legal standards set by the European Convention on Human Rights are supplemented by other Council of Europe treaties. In addition to legal standards, there are also recommendations and guidelines adopted by other Council of Europe bodies[2]. These documents are not legally binding, but do nevertheless form part of the Council of Europe compendium of standards.[3] The existing standards are presented in the compilation in a non-hierarchical manner under a number of relevant themes so as to stress the complementary role of the various Council of Europe bodies. The compilation has been complemented with a compendium of national good practices.[4] A selection of relevant good practices from member States appears in the appendix to the compilation.

[2.] The compilation has been prepared by the Steering Committee for Human Rights (CDDH) within the framework of its work on the protection and promotion of human rights in culturally diverse societies. The CDDH's on-going work on human rights in culturally diverse societies also includes the elaboration of guidelines from the Committee of Ministers to member States on the effective implementation of the relevant standards in this field. For the drafting work of preparing the compilation and the guidelines the CDDH set up a working group, Drafting Group on Human Rights in Culturally Diverse Societies (CDDH-DC), which met twice in 2014, in its restricted composition[5], to draft the compilation, and three times in the course of 2014 and 2015, in its enlarged composition[6], to draft the guidelines.

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

[3.] The Council of Europe builds in its work upon the universal values of human rights, democracy and rule of law reflected in the United Nations Universal Declaration of Human Rights as well as in a number of treaties, recommendations and guidelines developed at European level, of which the most important is the European Convention of Human Rights (hereafter referred to as "the Convention")[7]. These texts set forward a number of standards relating to the principles of freedom of thought, conscience and religion and the links to other Convention rights, in particular freedom of expression and freedom of association.

[4.] Since the first Council of Europe's Summit, in Vienna in 1993, shortly after the enlargement of the Organisation, the Heads of State and Government of member States recognised that the protection of national minorities and combating racism, xenophobia, anti-semitism are essential elements for ensuring stability and democratic security in Europe. The Vienna Summit also underlined

[1] Ministers' Deputies 1158th meeting, 12-13 December 2012. See Chairperson's summing-up.
[2] Committee of Ministers, Parliamentary Assembly and other institutions such as, for example, the Congress of Local and Regional Authorities, the Commissioner for Human Rights and the Venice Commission
[3] See document SG(2014)1 Final. Report by the Secretary General of the Council of Europe on the state of democracy, human rights and rule of law in Europe, Executive Summary, "Standard-Setting".
[4] The contributions received from a large number of member States are contained in document CDDH-DC(2014)004rev2 which will be updated regularly on the CDDH's website on "Human rights in cultural diverse societies". http://val-www.coe.int/t/dghl/standardsetting/hrpolicy/others_issues/culturally_diverse_societies/default_EN.asp?
[5] With experts from the Czech Republic, Finland, France, Greece, Portugal, Turkey and Ukraine.
[6] With experts from Croatia, the Czech Republic, Finland, France, Greece, the Netherlands, Norway, Poland, Portugal, Russian Federation, Spain, Turkey and Ukraine.
[7] The official title is **"**Convention for the Protection of Human Rights and Fundamental Freedoms" (ETS No. 5). It was opened for signature by the member States of the Organisation on 4 November 1950 and entered into force on 3 September 1953. It has been ratified by all 47 Council of Europe member States as a precondition for membership of the Organisation. It is not open for signature by non member States. Accession to the Convention by the European Union, comprising 28 of the Council of Europe member States, is currently being examined.

that the media can create a feeling of insecurity by sensationalist reporting if the norm of impartiality is breached. Consequently, it was decided to elaborate a Framework Convention for the Protection of National Minorities[8] creating the conditions necessary for persons belonging to national minorities to develop their culture, while preserving their religion, traditions and customs. Furthermore, it was decided to pursue a policy for combating racism, xenophobia, anti-semitism and intolerance by creating a European Commission against Racism and Intolerance.[9] Subsequently, in 2005 at the third Council of Europe Summit in Warsaw, the Heads of State and Government of member States reiterated their strong disapproval of all forms of intolerance and discrimination, in particular those based on sex, race and religion, including anti-semitism and islamophobia.

[5.] Since the Warsaw Summit democratic management of Europe's cultural diversity has been high in the political agenda of the Organisation, with a view to preventing conflicts and ensuring integration and social cohesion. As a result the Council of Europe launched, in 2008, a White Paper on "Living together as equals in dignity" with guidance on policy and good practices in the area of intercultural, including inter-religious, dialogue. In this context "Exchanges on the Religious Dimension of Intercultural Dialogue" take place on an annual basis within the framework of the Committee of Ministers with representatives of religions traditionally present in Europe, representatives of non-religious convictions and other players in civil society.[10] The creation of networks of good practices such as Intercultural Cities[11] and the 2008-2010 media campaign against discrimination[12] was also a continuation of the "White Paper" process. To promote intercultural dialogue the Council of Europe has developed a programme of education for democratic citizenship and enhancing intercultural competences based on the rights and responsibilities of citizens, which includes good practice guidance on intercultural education.

[6.] The Council of Europe has worked on common responses to the development of new information technologies based on the standards and values of the Organisation while ensuring the proper balance between the right to freedom of expression and information and respect for private life. Any intolerance manifested in form of hate speech online or offline is incompatible with the promotion of tolerance and pluralism in democratic societies. For this reason the Council of Europe launched in 2012 a youth campaign to combat hate speech online.[13]

[7.] In 2011, a Group of Eminent Persons, established on the proposal of the Council of Europe Secretary General, the published a report on "Living together – combining diversity and freedom in the 21st century Europe". The report examines a number of factors constituting a risk to the Organisation's values such as rising intolerance and discrimination, parallel societies, Islamic extremism, loss of democratic freedoms; and a possible clash between freedom of religion and

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

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

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

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

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

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

freedom of expression. The guiding principles at the beginning of part two of the report constitute sort of handbook on diversity.

[8.] In 2014, the Secretary General of the Council of Europe presented a report to the Committee of Ministers which provides an in-depth analysis of the state of democracy, human rights and rule of law in Europe based on the findings of Council of Europe monitoring mechanisms.[14] It refers to serious human rights violations which are on the rise throughout the continent such as, for example, racism, hate speech and discrimination. More particularly, the report draws attention to the fact that religion is increasingly used a pretext for discrimination.[15]

[9.] The efficient implementation of the Council of Europe standards at national and local level is essential for guaranteeing the effective respect for human rights and achieving greater unity among its member States. A major building block of systematic work on human rights implementation is human rights education, training and awareness-raising of legal professionals. Increased awareness of the European Convention on Human Rights is thus ensured through training for officials working in the justice system, responsible for law enforcement or responsible for the deprivation of a person's liberty. The Council of Europe has therefore developed specific support programmes for training on human rights standards in its member States.[16]

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

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

[11.] The **Parliamentary Assembly of the Council of Europe (PACE)** is the deliberating organ within the Organisation, composed of parliamentarians from the national parliaments of member States. It must be consulted about all international treaties drawn up at the Council of Europe. Though the texts – recommendations, resolutions and opinions – adopted by PACE are not legally binding they serve as a source of inspiration and advice for the Committee of Ministers. These texts have thus often been the initiator of new legal instruments adopted by the Committee of Ministers.[17]

[12.] The **Congress of Local and Regional Authorities of Europe**, acting as a consultative body for the Committee of Ministers, represents local and regional authorities from member States. Its recommendations add a local and regional dimension to the work of the intergovernmental sector by taking into account the needs of elected officials and citizens on the ground.[18]

---

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

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

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

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

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

[13.] To ensure effective implementation of its human rights standards the Council of Europe has worked on developing specific mechanisms to monitor the compliance of member States with their obligations under the most important legal instruments. The oldest and best known mechanism is the **European Court of Human Rights** established under the European Convention on Human Rights[19] which ensures respect of the Convention obligations in response to complaints by individuals or member States. Supervision of the execution of the Court's judgments is assured by the Committee of Ministers. Both these elements – the Court's examination of the admissibility[20] and merits of applications[21] and the Committee of Ministers' supervision of the execution of the Court's judgments - ensure a constant improvement of the human rights situation in the member States.[22] In its decisions and judgments the Court (and the former European Commission of Human Rights)[23] has interpreted the scope and the content of Article 9 of the Convention on the right to freedom of thought, conscience and religion as well and other linked Convention rights.[24] The case-law reiterates the central importance played by religious and philosophical belief in European societies and stresses the key values of pluralism and tolerance (see below 2.i).

[14.] This unique international judicial mechanism of the Court is complemented – as far as the social and economic rights guaranteed in the European Social Charter and the revised Charter are concerned – by a monitoring mechanism where decisions on compliance of national policies with the Charter requirements are made by the **European Committee of Social Rights**.[25]

[15.] The **Advisory Committee on the Framework Convention on the Protection of National Minorities[26]** is mandated to monitor the implementation of the rights of persons belonging to national minorities laid down in that Convention by an independent mechanism on the basis of a State reporting system.[27] Although the principle of non-discrimination is the one overarching the whole Framework Convention, other human rights principles are also included such as the right to conscience and religion[28]

[16.] Several other Council of Europe bodies with a non-judicial character deal with various aspects of the principles of freedom of thought, conscience and religion and the links to other Convention rights, in particular freedom of expression. The **European Commission against Racism and Intolerance (ECRI)** is entrusted with the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance in the light of the European Convention on Human Rights, its additional protocols and related case-law.[29] Religion plays a major role in its activities[30].

---

[19] See above footnote 8.
[20] The Court will first give a decision on the admissibility of an application.
[21] Judgments are made by the Court in single-judge formation, in Committees of three judges, in Chambers of seven judges and, in exceptional cases, as Grand Chamber [GC] of seventeen judges.
[22] In addition to individual measures taken by the State to erase the consequences of the violations suffered by the applicant the respondent State will often have to take general measures in order to prevent similar violations to occur again. Such measures may be to introduce legislative changes, or to change a judicial or an administrative practice.
[23] As a result of the entry into force of Protocol No. 11 improving the effectiveness of the Convention by establishing a single Court, the European Commission of Human Rights was dissolved in 1998.
[24] In more recent years the Court has dealt with an increasing number of key cases involving a wide and diverse range of issues such as the wearing of religious symbols and clothing, conscientious objection to military service, the right of parents to education of their children in conformity with their own conscience and belief (see below 3.A.ii., v. and ix.).
[25] The Committee's "conclusions" are based on yearly reports submitted by the States Parties. The Committee of Ministers may address a recommendation to a State asking it to remedy the situation. In respect of States Parties to the Additional Protocol providing for a system of collective complaints the Committee also examines "collective complaints" lodged by the social partners and other non-governmental organisations. This Additional Protocol (ETS No. 158) was opened for signature by the member States on 9 November 1995 and entered into force on 1 July 1998. On 1 June 2015 it had been ratified by Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, Netherlands, Norway, Portugal and Sweden. Austria, Denmark, Hungary, Slovakia and Slovenia have signed it but not ratified it. See below 3.A.iv. the Committee's decision and conclusions on the issue of alternative civilian service for conscientious objectors.
[26] See above footnote 9.
[27] Its findings based on country visits are restricted to advisory opinions to the Committee of Ministers who decides on the compliance of a member State with the obligation laid down in the Framework Convention.
[28] See further below 3.C.ii. The Advisory Committee's thematic commentary on education is particular relevant in respect of the right to education of children in conformity with the parents' religious and philosophical convictions (see below 3.A.viii).
[29] Committee of Ministers Resolution Res (2002)8 on the Statute of the European Commission against Racism and Intolerance. ECRI publishes country-by-country monitoring reports on national situations recommending measures necessary to combat violence, discrimination and prejudice faced by persons or groups of persons, notably on grounds of race, colour, language, religion, nationality or

[17.] The office of the **Commissioner for Human Rights** provides advice and information on the protection of human rights and the prevention of human rights violations.[31] The Commissioner's independent status allows him to issue opinions and comments on issues of particular relevance to freedom of thought, conscience and religion.[32]

[18.] The **European Commission for Democracy through Law (Venice Commission)** is the Council of Europe's expert body on constitutional matters.[33] Its primary task is to provide States with advice in the form of legal opinions on draft legislation or legislation already in force which is submitted to it for examination. Such opinions often concern fundamental rights' constitutional protection in its member States such as freedom of thought, conscience and religion or other related rights in particular freedom of association or freedom of expression.[34]

2. General principles and definitions

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

[19.] The European Court of Human Rights has underlined that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. In its religious dimension it is one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.[35] Religious freedom contains both an individual thought, conscience and belief (*forum internum)* and the manifestation of this freedom (*forum externum*). The first aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9, paragraph 1, freedom of religion encompasses a second aspect, namely the freedom to manifest one's belief, alone and in private but also to practice it in community with others and in public. The manifestation of religious belief may take the form of worship, teaching, practice and observance (see below 3.A.i). Bearing witness in words and deeds is bound up with the existence of religious convictions.[36]

---

national or ethnic origin. On the basis of its country monitoring work, ECRI has elaborated a series of General Policy Recommendations (GPR) addressed to all member States, which provide guidelines for the development of national policies and strategies in various areas. Of particular relevance in this context are GPR No. 5 on combating intolerance and discrimination against Muslims, GPR No. 6 on combating the dissemination of racist, xenophobic and anti-Semitic material via the Internet, GPR No. 7 on national legislation to combat racism and racial discrimination, GPR No. 9 on the fight against anti-Semitism (see below 3.C.iii.).

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

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

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

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

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

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

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

[20.] The Court has characterised pluralism, tolerance and openness as the hallmarks of democratic society.[37] Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position.[38] Indeed, the Court has recognised that pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts and that the harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion.[39] It has explicitly acknowledged that diversity should not be perceived as a threat but as a source of enrichment.[40]

[21.] The Framework Convention on National Minorities also mentions in its preamble that cultural diversity should be seen as a matter of enrichment rather than division. In its preamble it further acknowledges that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity.[41]

[22.] The Committee of Ministers recalled in its Declaration on Religious Freedom that there can be no democratic society based on mutual understanding and tolerance without respect for freedom of thought, conscience and religion. Its enjoyment is an essential precondition for living together.[42] Respecting one another is not only a question of avoiding tensions and conflicts, it is also about protecting freedom of belief and religion – a cornerstone of all human rights standards. This right should be implemented without discrimination against any religion or belief, or indeed against anyone without religious belief.[43]

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

[23.] The right to freedom of thought, conscience and religion in Article 9 contains both an internal freedom (*forum internum*)[44] and an external freedom (*forum externum*).[45] Regarding the "internal" aspect contained in the right to hold and to change ones religion or belief, this freedom is absolute and may not be subject to limitations of any kind.[46] The "external" aspect of the freedom contained in the wording "either alone or in community with others, in public or private, to manifest his religion or belief in worship, observance, practice, and teaching" is, in contrast to the internal freedom, not an absolute right and may be limited, but only under strictly limited circumstances set forth in the applicable limitations contained in paragraph 2 of Article 9 as described below.

iii. Limitations

[24.] The Court has observed that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place limitations on the freedom of thought, conscience and religion in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.[47] Paragraph 2 of Article 9 identifies the circumstances where a State

[37] *Handyside v. the United Kingdom*, judgment of 7 December 1976, §49; *Young, James, Webster v. the United Kingdom*, judgment of 13 August 1981, §63.
[38] *Valsamis v. Greece*, judgment of 18 December 1996, §27; *Leyla Şahin v. Turkey* [GC], judgment of 10 November 2005, §108; *Folgerø and Others v. Norway*, judgment of 29 June 2007, §84 (f).
[39] *Gorzelik and Others v. Poland* [GC], judgment of 17 February 2004, §92.
[40] *Nachova and Others v. Bulgaria* [GC], judgment of 6 July 2005, §145; *Timishev v. Russia*, judgment of 13 December 2005, §56.
[41] *Gorzelik and Others v. Poland*, §93 where the Court referred to the Framework Convention for the Protection of National Minorities.
[42] Adopted on 20 January 2011 at the 1103rd meeting of the Ministers' Deputies.
[43] Former Council of Europe Commissioner for Human Rights, Thomas Hammarberg, viewpoint on 'Religious Leaders'.
[44] *Van den Dungen v. the Netherlands*, Commission decision of 22 February 1995 (the Convention primarily protects the sphere of personal beliefs and religious creeds).
[45] See also below 3.A.at the beginning.
[46] *Buscarini v. San Marino*, §§38-39 (legal requirements mandating involuntary disclosure of religious beliefs are impermissible); *Georgian Labour Party v. Georgia*, judgment of 8 July 2008, §120 (an intention to vote for a specific party is essentially a thought confined to the internal forum of a voter and its existence cannot be proved or disproved until and unless it has manifested itself through the act of voting).
[47] *Kokkinakis v. Greece*, §33; *Metropolitan Church of Bessarabia and Others v. Moldova*, §115.

legitimately may restrict the manifestation of the right of freedom of religion or belief on the condition that such limitations are "prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." In its case-law the Court has typically applied the following three criteria when examining complaints of limitations on freedom of thought, conscience and religion.

"prescribed by law"

[25.] An interference can be justified if it is "prescribed by law" and "in accordance with the law". The impugned measures should not only have basis in the domestic law, but it should also refer to the quality of the law in question. The law should be both adequately accessible and foreseeable, that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his or her conduct. For domestic law to meet these requirements it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise.[48]

"legitimate aim"

[26.] The interference complained of has to have served a legitimate purpose of protecting public safety[49], public order, health, or morals or the rights and freedoms of others[50] as grounds identified in Article 9, paragraph 2**.**[51] The Court has reiterates that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9, paragraph 2, is exhaustive and that their definition is restrictive.[52] For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision.[53] The Court's practice is to be quite succinct when it verifies the existence of a legitimate aim within the meaning of the second paragraphs of Articles 8 to 11 of the Convention.[54]

"necessary in a democratic society"

[27.] It is not enough to justify a limitation on a manifestation of religion by stating that the limitation is 'in the interests of the public security, health, morality or the protection of rights and freedoms of others'. The limitation must in addition be necessary, in the sense that the particular interest in question is pressing, is proportional in its magnitude to the religious freedom value being limited, and cannot be accomplished in some less burdensome manner. The necessity constraint is very often the most significant factor in assessing whether particular limitations are permissible. In this sense, international standards impose more rigorous 'limitations on the limitations' of manifestations of religion, and thus provide protection for a broader range of religious activities[55].

---

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

[49] For example *S.A.S. v. France*, §115.

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

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

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

[53] *S.A.S. v. France*, §113.

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

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

[28.] In examining whether limitations to the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society", the Court has however consistently held that the Contracting States enjoy a certain but not unlimited margin of appreciation (see below 2.vi). It is, in any event, for the Court to give a final ruling on the limitation's compatibility with the Convention and it will do so by assessing in the circumstances of a particular case, inter alia, whether the interference corresponded to a "pressing social need" and whether it was "proportionate to the legitimate aim pursued".[56] In this connection the Court has noted that the adjective "necessary" does not have the flexibility of such expressions as "useful" or "desirable".[57]

[29.] In order to determine the scope of the State's margin of appreciation, the Court must take into account what may be at stake, for instance the need to maintain true religious pluralism, which is inherent in the concept of a democratic society.[58] Such values may, for example, determine conclusions that State authorities may properly deem it necessary to protect the religious beliefs of adherents against abusive attacks through expression[59] (see also below under 2.v.). In exercising its supervision, the Court must consider the interference complained of on the basis of the file as a whole.[60]

iv. Positive obligations

[30.] Under Article 1 of the European Convention on Human Rights, the Contracting States undertake to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention and its protocols. In consequence, a State is first under a negative obligation to refrain from interfering with the protected rights. This negative obligation is reflected, for example, in the language used in the second paragraph of Article 9 which provides that "[f]reedom to manifest one's religion or beliefs shall be subject only to such limitations as …". The overarching obligation to secure rights is, however, not confined to a requirement that States refrain from interfering with protected rights: it can also place the State under an obligation to take active steps. The guarantees found in the Convention have to be practical and effective rights. Hence, jurisprudence contains the idea of "positive obligations", that is, responsibilities upon the State to take certain action with a view to protecting the rights of individuals.[61]

[31.] The fundamental principle driving the case-law on positive obligations is the duty on the part of state authorities to ensure that freedom of religion and belief exists within a spirit of pluralism and mutual tolerance.[62] (see also above 2.i). It is not always obvious whether a positive obligation to protect thought, conscience or religion exists. In deciding more generally whether or not a positive obligation arises, the Court will seek to "have regard to the fair balance that has to be struck between the general interest of the community and the competing private interests of the individual, or individuals, concerned".[63]

v. Need for balancing between rights

---

[56] *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §53.
[57] *Handyside v. the United Kingdom*, §48; *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §116.
[58] See *Kokkinakis v. Greece*, §31.
[59] *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §55.
[60] *Kokkinakis v. Greece*, §47; *Metropolitan Church of Bessarabia and Others v. Moldova*, §119.
[61] *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, judgment of 3 May 2007, §§96-97, 125; *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §§84, 91, 95, 108.
[62] For example, *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16 December 2004, §80 (States have such a duty and discharging it may require engaging in mediation); *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §80 (It may also be expected that domestic arrangements permit religious adherents to practise their faith in accordance with dietary requirements, although the obligation may be limited to ensuring there is reasonable access to the foodstuff, rather than access to facilities for the ritual preparation of meat); *97 members of the Gldani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, judgment of 3 May 2007, §§141-142 (State authorities must respond appropriately to protect adherents of religious faiths from religiously-motivated attacks, and when such attacks have occurred, to do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a religiously induced violence), see below 3.C.i.
[63] *Dubowska and Skup v. Poland*, Commission decision of 18 April 1997.

[32.] Freedom of thought, conscience and religion as guaranteed in Article 9 is closely linked to other Convention rights, in particular freedom of expression (Article 10) [64] and freedom of assembly and association (Article 11)[65] but also others such as the right to privacy (Article 8)[66]. The Convention protects all these rights equally but not without certain limitations based on the conditions set out in the second paragraph of these articles (see above 2.iii). Although these rights are complementary, they may at times involve conflicting interests as a result of them being exercised. In such situations the State will need to weight the competing rights against one another in order to be able to strike a fair balance between them.[67] The proper balancing of these rights in accordance with the principle of proportionality is subject to the Court's supervision. How the Court approaches the interpretation of Article 9 and related guarantees will depend to a large extent upon the particular issue in question (see also below 2.vi).

[33.] In the case of attacks on religious beliefs the conflicting interests at stake will typically be, on the one hand, the applicant's right to communicate his or her ideas on religious beliefs to the public, and, on the other hand, the right of other persons to respect of their right to freedom of thought, conscience and religion.[68] Here the issue may be the extent to which State authorities may take action against expression in order to protect the religious sensibilities of adherents of particular faiths by preventing or punishing the display of insulting or offensive material that could discourage adherents from practising or professing their faith through ridicule.[69] The scope of Article 10's guarantee for freedom of expression encompasses, after all, ideas which "offend, shock or disturb", and in any case the maintenance of pluralist society also requires that adherents of a faith at the same time accept that their beliefs may be subject to criticism and to the propagation of ideas that directly challenge these beliefs.[70] On the other hand, those who exercise the freedom of expression under Article 10 also undertake duties and responsibilities, among them an obligation to ensure the peaceful enjoyment of the rights of other persons, e.g. those guaranteed under Article 9.[71]

[34.] There is also a risk of conflict between freedom of expression and the prohibition of all forms of discrimination. In cases where exercising the freedom of expression is used to incite hatred against a religious group and shows the characteristics of "hate speech" in that offensive speech is intended or likely to stir up ill-will against a group in society it is unlikely to attract any protection, particularly in light of Article 17 of the Convention prohibiting the abuse of rights[72] (see below 3.C.iii).

[35.] Indeed, many applications alleging a violation of an individual's right to participate in the life of a democratic society guaranteed by the freedoms of expression and of assembly and association in

[64] *Arrowsmith v. the United Kingdom*, Commission decision of 12 October 1978, §§60-62.
[65] *Hasan and Chaush v Bulgaria* [GC], judgment of 26 October 2000, §62.
[66] *Schüth v. Germany*, judgment of 23 September 2010, §57 and *Obst v. Germany*, judgment of 23 September 2010.
[67] Committee of Ministers Declaration on human rights in culturally diverse societies, adopted on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies
[68] *Otto-Preminger-Institut v. Austria*, §§55-56:"The issue before the Court involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely the right of the applicant association to impart to the public controversial views and, by implication, the right of interested persons to take cognisance of such views, on the one hand, and the right of other persons to proper respect for their freedom of thought, conscience and religion, on the other hand".
[69] *Otto-Preminger-Institut v. Austria*, §§55-56: "The respect for the religious feelings of believers as guaranteed in Article 9 can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration; and such portrayals can be regarded as malicious violation of the spirit of tolerance, which must also be a feature of democratic society. The Convention is to be read as a whole and therefore the interpretation and application of Article 10 (art. 10) in the present case must be in harmony with the logic of the Convention"; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §60.
[70] *Otto-Preminger-Institut v. Austria*, §47; *Klein v. Slovakia*, judgment of 31 October 2006, §47: "While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane".
[71] *Otto-Preminger-Institut v. Austria*, §§47, 55-56; *Klein v. Slovakia*, judgment of 31 October 2006, §47: "While the guarantees of Article 10 are applicable also to ideas or information that offend, shock, or disturb the State or any sector of the population, those who exercise the freedom of expression undertake duties and responsibilities. Amongst them – in the context of religious opinions and beliefs – may legitimately be included an obligation to ensure the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs including a duty to avoid as far as possible an expression that is, in regard to objects of veneration, gratuitously offensive to others and profane".
[72] *Pavel Ivanov v. Russia*, decision of 20 February 2007; *Lehideux and Isorni*, judgment of 23 September 1998, §§53, 47. See also *Garaudy v. France*; decision of 24 June 2003; *Féret v. Belgium*, judgment of 16 July 2009, §69.

terms of Articles 10[73] and 11[74] may also contain a reference to Article 9, although the Court has in many instances been able to conclude that the issues raised by an application can be better resolved by reference to one or other of these other two guarantees.

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

[36.] The Court has established in its case-law that the authorities have a certain scope for discretion, i.e. a margin of appreciation, in determining the most appropriate measures to take in order to reach the legitimate aim sought. By reason of their direct and continuous contact with the vital forces of their countries, national authorities are often better placed than an international court to assess matters falling under the articles concerned.[75] This doctrine allows States to enact laws and implement policies that may differ from each other with regard to different histories and cultures.[76] Protocol No. 15 amending the Convention[77] introduces a reference to the principle of subsidiarity and the doctrine of the margin of appreciation.[78]

[37.] Moreover, the Court has reiterated that the margin of appreciation afforded to the State is wider where there is no consensus within the member States, either as to the relative importance of the interest at stake or as to the best means of protecting it.[79] The Court may also, if appropriate, have regard to any consensus and common values emerging from the practices of the States parties to the Convention.[80] There will usually be a wide margin if the State is required to strike a balance between competing private and public interests or different Convention rights[81] (see also above under 2.v). While this margin of appreciation should be respected it should not be seen as unlimited and preventing the Court from any critical assessment of the proportionality of the measures concerned. The domestic margin of appreciation thus goes hand in hand with a European supervision.[82]

[38.] As regards Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals[83] and in deciding to what extent a limitation of the right to manifest one's religion or beliefs is "necessary". That being

---

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

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

[75] *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §58.

[76] *Murphy v. Ireland*, judgment of 10 July 2003, §§73, 82.

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

[78] Article 1 of Protocol 15 states:
At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows:
"Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,"
See also the Explanatory Report to the Protocol, §9.

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

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

[81] *Schüth v. Germany*, judgment of 23 September 2010, §56.

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

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

said, in delimiting the extent of the margin of appreciation in a given case, the Court must also have regard to what is at stake therein.[84] The Court has in particular held that where questions concerning the relationship between State and religions are at stake[85], on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance.[86] It is not possible to discern throughout Europe a uniform conception of the significance of religion in society, and the meaning or impact of the public expression of a religious belief will differ according to time and context. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order. Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the specific domestic context.[87] Likewise, according to the Court's case-law, the decision whether or not to perpetuate a tradition falls in principle within the margin of appreciation of the respondent State. The Court takes into account the fact that Europe is marked by a great diversity between the States of which it is composed, particularly in the sphere of cultural and historical development. It emphasises, however, that the reference to a tradition cannot relieve a Contracting State of its obligation to respect the rights and freedoms enshrined in the Convention and its Protocols[88].

[39.] The margin of appreciation is also particularly appropriate in respect to restrictions on free speech in respect to religion since what is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever growing array of faiths and denominations. The Court has held that a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion. Moreover, as in the field of morals, and perhaps to an even greater degree, there is no uniform European conception of "the requirements of the protection of the rights of others" in relation to attacks on their religious convictions.[89]

vii. Duty of neutrality and impartiality of the State

[40.] In exercising its regulatory power in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.[90] Among other things this obligation includes an obligation to refrain from taking sides in religious disputes. When faced with religious conflicts, the role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other.[91] In any event, some degree of tension is only the unavoidable consequence of pluralism.[92]

[41.] In legislation dealing with the structuring of religious communities, the neutrality requirement excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed.[93] Accordingly, state measures favouring a particular leader or specific organs of a divided religious community or seeking to compel the community or part of it to place itself, against its will, under a single leadership, constitute an infringement of the freedom of religion.[94] It is

[84] See for example *Manoussakis and Others*, cited above, §44, and *Leyla Şahin*, cited above, §110.
[85] *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000, §84; *Wingrove v. the United Kingdom*, §58.
[86] This will be the case, for instance, when it comes to regulating the wearing of or displaying religious symbols in educational institutions *(Leyla Şahin v. Turkey* [GC], judgment of 10 November 2005, §109) or to organisation of the school environment and to the setting and planning of the curriculum (*Lautsi and Others v. Italy*, §§68-69), especially in view of the diversity of the approaches taken by national authorities on the issue.
[87] *Otto-Preminger-Institut v. Austria*, §50.
[88] *Lautsi and Others v. Italy*, §68.
[89] *Wingrove v. the United Kingdom*, §58.
[90] *Metropolitan Church of Bessarabia v. Moldova*, §§116-117; *Supreme Holy Council of the Muslim Community v. Bulgaria*, §§93-99; *Serif v. Greece*, §§49-54; *Agga v. Greece (no. 2)*, §§56-61.
[91] *Serif v. Greece,* judgment of 14 December 1999, §53.
[92] *Agga v. Greece (no. 2)*, judgment 17 October 2002, §§56-61.
[93] CDL-PI(2014)005 Compilation of the Venice Commission opinions and reports concerning freedom of religion and belief (revised July 2014), p. 15.
[94] *Supreme Holy Council of the Muslim Community v. Bulgaria*, §§73, 93-99

immaterial to the determination of whether an "interference" has occurred with the rights of adherents who are dissatisfied with the outcome of state intervention that they are at liberty to establish a new religious organisation.[95]

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

[42.] States are obliged to respect and ensure to all individuals subject to their jurisdiction the right to freedom of thought, conscience and religion without discrimination. The protection in Article 9 of the Convention is reinforced by the prohibition of discrimination in Article 14 and Article 1 of Protocol No. 12.[96] These two provisions make explicit reference to "religion, political or other opinion" as examples of prohibited grounds for discriminatory treatment. The meaning of "discrimination" in Article 1 of Protocol No. 12 is intended to be identical to that in Article 14 of the Convention.[97]

[43.] The notion of discrimination has been interpreted consistently in the Court's case-law which makes it clear that "discrimination" means treating differently without an objective and reasonable justification, persons in similar situations.[98] States enjoy however a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment.[99] The Court has also found discriminatory a failure to treat differently persons in significantly different situations.[100] Thus, the Court must not neglect the specific features of different religions where these are of particular significance in resolving the dispute brought before the Court.[101]

[44.] A general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even where it is not specifically aimed at that group and there is no discriminatory intent.[102] This is only the case, however, if such policy or measure has no "objective and reasonable" justification, that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised.[103]

[45.] If a State goes beyond its core obligations under Article 9 and creates additional rights falling within the wider ambit of freedom of religion or conscience, such rights are then protected by Article 14 in conjunction with Article 9 against discriminatory application of domestic law.[104] For example, any distinction acknowledging historical differences in the role that different religions have played in a particular country's history are permissible so long as they are not used as a justification for ongoing discrimination.[105]

3. Thematic issues

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

[95] *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §§122-160.
[96] The prohibition of discrimination found in Article 14 is limited in its scope as it applies only to "the rights and freedoms set forth" in the Convention which means that the provision can only be invoked in conjunction with one or more of the substantive guarantees contained in the Convention or in one of the protocols. However Protocol No. 12 of the Convention is wider in that it extends the scope of protection to "any right set forth by law" and thus introduces a general prohibition of discrimination.
[97] *Sejdić and Finci v. Bosnia and Herzegovina* [GC], judgment of 22 December 2009, §55.
[98] *Ibid*.
[99] *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, §96.
[100] *Thlimmenos v. Greece*[GC], judgment of 6 April 2000, §44.
[101] *Cha'are Shalom Ve Tsedek v. France*.
[102] See for example *D.H. and Others v. the Czech Republic* [GC], §§ 175, 184-185; *S.A.S. v. France*, §161.
[103] *D.H. and Others v. the Czech Republic*, §196; *S.A.S. v. France*, §161.
[104] *Alujer Fernandez and Caballero Garcia v. Spain*, inadmissibility decision of 14 June 2001 (The Court observed that freedom of religion does not entail Churches or their members being given a different tax status to that of other taxpayers. However, where such agreements or arrangements do exist, these do not, in principle, contravene the requirements of Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other Churches wishing to do so).
[105] *Savez Crkava "Riječ Žlvota" and Others v. Croatia*, §§56-58, 85-93.

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

> **1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.**
> **2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.**

[47.] The freedom proclaimed by Article 9, paragraph 1, is understood as the right of every person to freely form and hold his or her own thoughts and convictions, inspired by some ethical or religious system of values. Within the limit of the so-called "*forum internum*" those freedoms are of absolute character and cannot be subject to limitations. At the same time, Article 9, paragraph 1, guarantees the freedom to manifest one's religion or belief which entails some form of interaction with other persons or institutions of the society. The actions within the framework of the so-called "*forum externum*" may be undertaken both by individuals or collective entities, especially churches and religious organisations[106]. In this sphere limitations are admissible in accordance with the second paragraph of the article.

[48.] Article 9 entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion[107]. It refers also to the freedom to change one's religion or belief. It further entails the freedom to manifest one's religion but also the freedom not to manifest it.

[49.] Apart from Article 9, issues concerning conscience and belief may also arise elsewhere in the Convention. As already mentioned above, Article 9 is closely related to Article 8's guarantee of the right to respect for private life[108], Article 10's guarantee of freedom of expression and to the right of association under Article 11[109]. Also additional provisions provide support, such as Article 2 of Protocol No. 1, which requires that parents' philosophical and religious beliefs are accorded respect in the provision of education to their children.[110] In addition, under Article 14 enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as, inter alia, religion.[111]

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

[50.] The general scope of manifestation of religious beliefs was clarified by the Court in its cornerstone judgment in the case of *Kokkinakis v. Greece*[112] relating to Article 9:

> 31. [...] While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.
> According to Article 9, freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter.

---

[106] See below 3.B.
[107] See, for example, *Kokkinakis v. Greece*, 25 May 1993, §31; *Buscarini and Others v. San Marino* [GC], §34; *Leyla Şahin v. Turkey*, §104; *S.A.S. v. France*, judgment of 1 July 2014, §124.
[108] *S.A.S. v. France*, §106: "The ban on wearing clothing designed to conceal the face, in public places, raises questions in terms of the right to respect for private life (Article 8 of the Convention) of women who wish to wear the full-face veil for reasons related to their beliefs, and in terms of their freedom to manifest those beliefs (Article 9 of the Convention)".
[109] Cf *Young, James and Webster v. the United Kingdom*, judgment of 13 August 1981, §57: "the protection of personal opinion afforded by Articles 9 and 10 in the shape of freedom of thought, conscience and religion and of freedom of expression is also one of the purposes of freedom of association as guaranteed by Article 11".
[110] See below 3.A.ix.
[111] See also below 3.C.ii.
[112] Judgment of 25 May 1993. See also *Metropolitan Church of Bessarabia and Others*, judgment of 13 December 2001, §114.

[…]

[51.] In the said case[113] the Court further clarified that in promoting pluralism within the framework of the Convention's Article 9 not only protects religious belief but also non-belief as well as non-religious belief:

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

General scope

[52.] The scope of Article 9 is potentially wide and the right to manifest one's religion extends not only to freedom in the private sphere and individual manifestations but also to manifestations in community and in public. It has an individual dimension as well as a collective one. It is vested both with natural persons (including minors)[114] but also collective entities (legal persons, associations, including churches)[115]. The manifestation of religion and belief may take various forms including worship, teaching, practice and observance. The term "practice" as employed in paragraph 1 does not however cover as a "manifestation" of the belief each act which is in some way inspired, motivated or influenced by it. Thus, for example, acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9, paragraph 1. In order to count as a "manifestation" within the meaning of Article 9, an act must be intimately linked to the religion or belief, such as an act of worship, devotion, teaching or observance, which forms part of the practice of a religion or belief in a generally recognised form.[116] On the contrary, when the actions of individuals do not actually express the belief concerned they cannot be considered to be as such protected by Article 9, paragraph 1, even when they are motivated or influenced by it.[117]

[53.] The scope of Article 9 cannot be stretched so far as, for example, allowing general laws to be broken.[118] However, the question of compatibility of general laws with Article 9 of the Convention can also be put into question by the Court. Moreover Article 9 does not include, for example, matters such as the non-availability of divorce.[119] A refusal to hand over a letter of repudiation to a former spouse in terms of Jewish law also does not involve a manifestation of belief,[120] nor will the choice of forenames for children.[121]

[54.] Similarly, in some instances it may be necessary to consider whether it would be more appropriate to consider an issue under another provision of the Convention. For instance, certain manifestations of views and convictions can be qualified by the Court as not falling under Article 9 but rather under Article 10 of the Convention. For instance, the Court considered that the distribution of anti-abortion material outside a clinic did not involve expression of religious or philosophical

---

[113] See also *Buscarini and Others v. San Marino* [GC], judgment of 18 February 1999, §34.
[114] See below 3.A.x.
[115] See below 3.B.
[116] *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §82.
[117] *Arrowsmith v. the United Kingdom*, decision of 16 May 1977, §71.
[118] *Pichon and Sajous v. France*, decision of 2 October 2001. The Court considered that, as long as the sale of contraceptives was legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants could not give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products.
[119] *Johnston and Others v. Ireland*, judgment of 18 December 1986, §§62-63. For the Court it was clear that the applicant's freedom to have and manifest his convictions was not in issue; his complaint derived, in essence, from the non-availability of divorce under Irish law, a matter to which, in the Court's view, Article 9 could not, in its ordinary meaning, be taken to extend.
[120] *D. v. France*, decision of 6 December 1983. The Commission noted that the applicant did not allege that in handing over a letter of repudiation he would be obliged to act against his conscience, since it is an act by which divorce is regularly established under Jewish law; the Commission, therefore, considered that in refusing to hand over such letter to his ex-wife, the applicant was not manifesting his religion in observance or practice, within the meaning of Article 9, para 1 of the Convention.
[121] *Salonen v. Finland*, decision of 2 July 1997. The Commission noted that although the desired name had certainly a strong personal motivation, it did not find that it was a manifestation of any belief in the sense that some coherent view on fundamental problems could be seen as being expressed thereby.

beliefs as this involved essentially persuading women not to have an abortion.[122] Interferences with the right to disseminate materials of the kind in question may instead give rise to issues falling under Article 10's guarantee of freedom of expression. The deprivation of a religious organisation's material resources, for example, has been held not to fall within the scope of Article 9, but rather to give rise to issues under the protection of property in terms of Article 1 of Protocol No. 1.[123] Similarly, refusal to grant an individual an exemption from the payment of a church tax on the ground of non-registration may be considered in terms of the right to property taken in conjunction with the prohibition on discrimination in the enjoyment of Convention guarantees rather than as a matter of conscience or religion.[124] A claim that the refusal to recognise marriage with an underage girl as permitted by Islamic law involved an interference with manifestation of belief was deemed not to fall within the scope of Article 9 but rather of Article 12.[125]

[55.] In any event, the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement to establish that a person acted in fulfilment of a duty mandated by the religion or belief in question.[126]

Limitations

[56.] Since the manifestation by a person of his or her religion or belief may have an impact on others, the drafters of the Convention qualified this aspect of the freedom in the manner set out in Article 9, paragraph 2[127].

[57.] However, the fundamental nature of the rights guaranteed in Article 9, paragraph 1, is also reflected in the wording of the paragraph providing for limitations on them. Unlike the second paragraphs of Articles 8, 10 and 11, which cover all the rights mentioned in the first paragraphs of those articles, that of Article 9 refers only to "freedom to manifest one's religion or belief". In so doing, it recognises that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected[128]. In contrast, the right to hold or not to hold a belief and to change religion as a matter of conscience is an absolute right[129] not covered by the limitations laid down in Article 9, paragraph 2.

[58.] The second paragraph of Article 9 provides that any limitation placed on a person's freedom to manifest religion or belief must be prescribed by law and necessary in a democratic society in pursuit of one or more of the legitimate aims set out therein[130].

[59.] The case-law under Article 9 of the Convention also indicates that, if a person is able to take steps to circumvent a limitation placed on his or her freedom to manifest religion or belief, there is no interference with the right under paragraph 1 and the limitation therefore is not required to be justified under paragraph 2[131]. In the case of *Cha'are Shalom Ve Tsedek v. France*, concerning the failure to accord a religious community an authorisation to perform the slaughter of animals for consumption in accordance with its specific religious prescriptions, the Court held that there would be interference with the freedom to manifest one's religion only if the illegality of performing ritual slaughter made it impossible for ultra-orthodox Jews to eat meat from animals slaughtered in accordance with the religious prescriptions they considered applicable. But since this was not the case, the refusal of the

[122] *Van den Dungen v. the Netherlands*, decision of 22 February 1995. See also *Knudsen v. Norway*, decision of 8 March 1985.
[123] *Holy Monasteries v. Greece*, judgment of 9 December 1994.
[124] *Darby v. Sweden*, judgment of 23 October 1990, §§30-34.
[125] *Khan v. the United Kingdom*, decision of 7 July 1986.
[126] *Eweida and Others v. the United Kingdom*, §82.
[127] Compare *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.
[128] See *Kokkinakis v. Greece*, judgment of 25 May 1993, §33,
[129] PACE Resolution 1846 (2011) on combating all forms of discrimination based on religion. Compare also *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.
[130] Compare *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, §80.
[131] *Ibid.*, §83

authorisation did not constitute an interference with the applicant association's right to the freedom to manifest its religion.[132]

[60.] Finally, one should stress that the enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9, paragraph 2, is exhaustive and that their definition is restrictive[133]. For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision[134].

[61.] In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to uphold the fundamental right to freedom of expression by ensuring national legislation does not unduly limit religiously motivated speech.[135]

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

[62.] The wearing of religious symbols or clothing constitutes one of the forms of manifesting one's religious beliefs under Article 9. In *Eweida and Others*[136] the Court characterised such a manifestation as a fundamental right because a healthy democratic society needs to tolerate and sustain pluralism and diversity; but also because of the value to an individual who has made religion a central tenet of his or her life to be able to communicate that belief to others[137].

[63.] In the said case the Court found a violation of Article 9 in respect of the first applicant considering that a fair balance between the applicant's desire to manifest her religion by wearing a cross and the interest of the private employer had not been struck. It also noted that there was no evidence that the wearing of other, previously authorised, religious symbols had had any negative impact on the image of the airline company in question.[138]

[64.] Restrictions on the wearing of items of clothing or other conspicuous signs of religious belief will therefore normally constitute an interference with the right to manifest religious beliefs. The compatibility with Article 9 of such restrictions will depend on the reasons advanced for the restrictions and also on the proportionality of the interference and whether a fair balance has been struck. As also stressed by the Court in the *Eweida* judgment, the importance for the second applicant of being permitted to manifest her religion by wearing her cross visibly must weigh heavily in the balance[139].

[65.] In this area, the Court however recognises a certain margin of appreciation on the part of state authorities, particularly where the justification advanced by the State is public or other persons' safety[140] or the perceived need to prevent certain fundamentalist religious movements from exerting pressure on others belonging to another religion or who do not practise their religion[141].

---

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

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

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

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

[136] *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013.

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

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

[139] *See Eweida and Others v. the United Kingdom*, §99.

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

[141] *Karaduman v. Turkey*, decision of 3 May 1993 (requirement that an official photo could not show a graduate wearing an Islamic headscarf, but only bare-headed); *Köse and 93 Others v. Turkey*, decision of 24 January 2006 (prohibition on wearing headscarf within limits of religiously oriented school, a general measure imposed upon all students irrespective of belief: inadmissible); *Kurtulmuş v. Turkey*,

[66.] Yet, the grounds for limitation have to be assessed carefully in each case taking into account its particular circumstances. In the case of *Ahmet Arslan and Others v. Turkey*[142] the Court found a violation of Article 9 holding, in particular, that there was no evidence that the applicants had represented a threat to the public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. The Court emphasised that in contrast to other cases, the case concerned punishment for the wearing of particular dress in public areas that were open to all, and not regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.[143]

[67.] In the case of *S.A.S. v. France*[144], which concerned the ban on veil of the face, the Court took into account the State's margin of appreciation afforded in the context of the relationship between State and religions in a given society. The Court held that France had a wide margin of appreciation in the present case, in particular as there was little common ground amongst the member States of the Council of Europe as to the question of the wearing of the full-face veil in public. The Court thus observed that there was no European consensus against a ban. Consequently, the impugned ban could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others". Accordingly, there had been no violation either of Article 8 or of Article 9 of the Convention. Differences in the rules applied by the States may thus be regarded as coming within the scope of the margin of appreciation.

[68.] The Court has also examined a number of cases on the wearing religious symbols in schools and other educational institutions - both by pupils and students[145] as well as by teachers[146]. In *Leyla Şahin v. Turkey*[147], the Grand Chamber reiterated the wide margin of appreciation which it affords to States on this matter:

> 109. Where questions concerning the relationship between State and religions are at stake, on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance [...]. This will notably be the case when it comes to regulating the wearing of religious symbols in educational institutions, especially […] in view of the diversity of the

---

decision of 24 January 2006 (university professor refused authorisation to wear a headscarf); *Dogru v. France*, judgment of 4 December 2008, §§47-78 (exclusion of female pupils from state schools for refusing to remove religious attire during physical education and sports lessons: no violation); similarly *Kervanci v. France*, judgment of 4 December 2008, §§46-78.

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

[143] *Ibid.* §§50-52.

[144] Judgment[GC] of 1 July 2014.

[145] See, for example, *Kervanci v. France*, judgment of 4 December 2008; *Aktas v. France*, decision of 30 June 2009; *Ranjit Singh v. France*, decision of 30 June 2009. These cases concerned the expulsion of pupils from schooling for their refusal to remove various religious symbols (Muslim headscarves and the Sikh keski or under-turban) during lessons. The Court considered that the interference with the right to manifest their beliefs could be considered proportionate to legitimate aims of protecting the rights and freedoms of others and of protecting public order.[145] The expulsions had not been on account of any objection to religious convictions as such and the ban had in any event sought to protect the constitutional principle of secularity.

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

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

> approaches taken by national authorities on the issue. It is not possible to discern throughout Europe a uniform conception of the significance of religion in society […], and the meaning or impact of the public expression of a religious belief will differ according to time and context [...]. Rules in this sphere will consequently vary from one country to another according to national traditions and the requirements imposed by the need to protect the rights and freedoms of others and to maintain public order […]. Accordingly, the choice of the extent and form such regulations should take must inevitably be left up to a point to the State concerned, as it will depend on the specific domestic context […].

[69.] In connection with the debate in many European countries on the prohibition of religious clothing, such as the *burqa* and the *niqab*, the Commissioner for Human Rights referred in 2011 to a general ban on such attire as constituting an ill-advised invasion of individual privacy.[148] In general he advised States:

> […]to avoid legislating on dress, other than in the narrow circumstances set forth in the Convention although he considered it legitimate to regulate that those who represent the state, for instance police officers, do so in an appropriate way. In some instances, this may require complete neutrality as between different political and religious insignia; in other instances, a multi-ethnic and diverse society may want to cherish and reflect its diversity in the dress of its agents."
>
> […]
>
> The political challenge for Europe is to promote diversity and respect for the beliefs of others whilst at the same time protecting freedom of speech and expression. If the wearing of a full-face veil is understood as an expression of a certain opinion, we are in fact talking here about the possible conflict between similar or identical rights – though seen from two entirely different angles.

[70.] In its Resolution 1743 (2010) "Islam, Islamism and Islamophobia in Europe"[149], the Parliamentary Assembly referred to the ban of full veiling or other religious or special clothing:

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

Furthermore, the Parliamentary Assembly asked the Committee of Ministers to:[150]

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

iii. Manifestation of religion and belief in various settings

[71.] In general the Court has shown reluctance to recognise any positive obligation on the part of employers to take steps to facilitate the manifestation of belief, for example, by organising the discharge of responsibilities to allow an individual to worship at a particular time or in a particular manner. Employees have a duty to observe the rules governing their working hours, and dismissal for failing to attend work on account of religious observances does not give rise to an issue falling within the scope of Article 9.[151] In cases concerning the absence or refusal to work on days for religious activities, the measures taken by the authorities in respect of the applicants were considered not to have been based on the applicants' religious beliefs but to have been justified by the specific contractual obligations between the persons concerned and their respective employers. In cases involving restrictions placed by employers on an employee's ability to observe religious practice, the

[148] Viewpoint on"Burqa and privacy" published on 20 July 2011, see *Human rights in Europe: no grounds for complacency. Viewpoints by Thomas Hammarberg, Council of Europe Commissioner for Human Rights*, pp. 39-43.
[149] Adopted on 23 June 2010.
[150] PACE Recommendation 1927 (2010) on Islam, Islamism and Islamophobia in Europe, adopted on 23 June 2010.
[151] See *X v. the United Kingdom*, decision of 12 March 1981; *Konttinen v. Finland*, decision of 3 December 1996; *Stedman v. the United Kingdom*, decision of 9 April 1997*; Kosteski v."the former Yugoslav Republic of Macedonia,* judgment of 13 April 2006, §39.

Commission held in several decisions that the possibility of resigning from the job and changing employment meant that there was no interference with the employee's religious freedom. [152]

[72.] The Court also considered that the refusal to adjourn a hearing listed on the date of a Jewish holiday, even supposing that it constituted an interference with the applicant's right under Article 9, was prescribed by law and was justified on grounds of the protection of the rights and freedoms of others – and in particular the public's right to the proper administration of justice and the principle that cases be heard within a reasonable time. [153]

[73.] In *Eweida and Others v. the United Kingdom*, two employees (third and fourth applicants) were dismissed from employment for expressing a conscientious objection to performing a duty that they believed would condone, approve or facilitate same-sex conduct. While reiterating the importance of protecting the right to freedom of religion and accepting that, in the case of the third applicant, the local authority's requirement that all registrars of births, marriages and deaths be designated also as civil-partnership registrars had had a particularly detrimental impact on her because of her religious beliefs, the Court held that State in question had acted within its margin of appreciation and dismissed the claim for reasonable accommodation requested by the applicants.[154] Similarly in the case of the fourth applicant, the Court did not find that the margin of appreciation had been exceeded. While the Court did not consider that an individual's decision to enter into a contract of employment and to undertake responsibilities which he knew would have an impact on his freedom to manifest his religious belief was determinative of the question whether or not there been an interference with Article 9 rights, this was a matter to be weighed in the balance when assessing whether a fair balance was struck. However, for the Court the most important factor to be taken into account was that the employer's action was intended to secure the implementation of its policy of providing a service without discrimination. [155] With respect to the first applicant, who complained that her employer placed restrictions on her visibly wearing Christian cross around her neck while at work, the Court considered the issues in terms of the positive obligation on the State authorities to secure the rights under Article 9 to those within their jurisdiction in view of the fact that the act complained of was carried out by a private company and was not therefore directly attributable to the respondent State. The Court examined therefore whether the right of the applicant to freely manifest her religion was sufficiently secured within the domestic legal order and whether a fair balance was struck between her rights and those of others. It concluded that a fair balance had not been struck between the applicant's desire to manifest the religious belief on the one side and the employer's wish to project a certain corporate image. With respect to the second applicant, the Court found on the contrary no violation of Article 9, taken alone or in conjunction with Article 14 of the Convention, bearing in mind the reason for asking her to remove the cross or to wearing it in other forms, namely the protection of health and safety on a hospital ward.

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

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

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

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

[155] *Ibid.*, §109.

enforcement of rights and full equality in practice. It also recommends ensuring that management and human resources personnel receive the necessary initial training and professional support to be able to interact with ethnically, religiously and linguistically diverse employees and to eliminate and prevent racial discrimination and racial harassment[156].

[75.] In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly recalled that expression of faith is sometimes unduly limited by national legislation and policies which do not allow the accommodation of religious beliefs and practices.[157] It therefore called upon member States to promote reasonable accommodation within the principle of indirect discrimination so as to uphold freedom of conscience in the workplace while ensuring that access to services provided by law is maintained and the right of others to be free from discrimination is protected.[158]

[76.] With regard to the celebration of religious holidays, the Advisory Committee on the Framework Convention for the Protection of National Minorities encourages the authorities to continue the dialogue with representatives of religious communities and national minorities celebrating religious holidays on days which are not by law non-working days in order to find appropriate solutions to offer persons belonging to national minorities equal opportunities to benefit from their right to manifest their religion or belief.[159]

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

> - *Days for religious activities*. The two types of day that raise questions of exemptions are first, days of the week that have religious significance (for example, for Friday prayers and Saturday or Sunday worship), and second, calendar days of religious significance (Christmas, Yom Kippur, Ramadan). To the extent possible, State laws should reflect the spirit of tolerance and respect for religious belief.
> - *Food.* There are several foods that are prohibited by many religious and ethical traditions, including meat generally, pork, meat that is not prepared in accordance with ritual practices, and alcohol. In a spirit of promoting tolerance, the State could encourage institutions that provide food - particularly schools, hospitals, prisons, and the military - to offer optional meals for those with religious or moral requirements[160].

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

> 13.1. to guarantee freedom of conscience and religious expression within the conditions set out in the European Convention on Human Rights for all citizens and, in particular, to:
> […]
> b. facilitate, within the limits set out in Article 9 of the European Convention on Human Rights, the observation of religious rites and customs, for example with regard to marriage, dress, holy days (with scope for adjusting leave) and military service;

[79.] Respect of the right of members of armed forces to freedom of thought, conscience and religion was reiterated by the Committee of Ministers in February 2010 in its Recommendation on human rights of members of armed forces. At the same time it specified that specific limitations may be placed on the exercise of this right within the constraints of military life. Any restriction should

[156] On the issue of discriminatory dismissal from work on grounds of religion - see also *Ivanova v. Bulgaria*, judgment of 12 April 2007.
[157] PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §1. In §2 of the Resolution the Parliamentary Assembly refers to the reasonable accommodation of religious beliefs and practices as a pragmatic means of ensuring the effective and full enjoyment of freedom of religion. When it is applied in a spirit of tolerance, this concept allows all religious groups to live in harmony in the respect and acceptance of their diversity. Furthermore in §6.1 member States are called upon to promote a culture of tolerance and "living together" based on the acceptance of religious pluralism and on the contribution of religions to a democratic and pluralist society, but also on the right of individuals not to adhere to any religion.
[158] §§ 6.2 and 6.2.2. See also *Institutional accommodation and the citizen: legal and political interaction in a pluralist society.*Trends in Social Cohesion, No. 21, Council of Europe Publishing Editions.
[159] Second Opinion of the Advisory Committee on Poland, adopted on 20 March 2009, §112. See also Committee of Ministers' Resolution CM/ResCMN(2012)20 of 28 November 2012 on the implementation of the Framework Convention for the Protection of National Minorities by Poland.
[160] Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004).

however comply with the requirements of Article 9, paragraph 2, of the Convention. Moreover there should be no discrimination between members of the armed forces on the basis of their religion or belief. [161]

[80.] In the case of *Kalaç v. Turkey*, the Court considered that in choosing to pursue a military career a person is accepting of his own accord a system of military discipline that by its very nature imply the possibility of placing on certain of the rights and freedoms of members of the armed forces limitations incapable of being imposed on civilians. States may adopt for their armies disciplinary regulations forbidding this or that type of conduct, in particular an attitude inimical to an established order reflecting the requirements of military service.[162] In this case, the applicant, within the limits imposed by the requirements of military life, was able to fulfil the obligations which constitute the normal forms through which a Muslim practises his religion. For example, he was in particular permitted to pray five times a day and to perform his other religious duties, such as keeping the fast of Ramadan and attending Friday prayers at the mosque. The Court accordingly concluded that the applicant's compulsory retirement was not prompted by the way the applicant manifested his religion but by his conduct and attitude breaching military discipline and infringing the principle of secularism.[163]

iv. Rights of persons deprived of their liberty

[81.] Prison authorities are expected to recognise the religious needs of those deprived of their liberty by allowing inmates to take part in religious observances. The European Prison Rules[164] aimed at providing guidance to prison administration[165] state *inter alia* that:

> **29.2 The prison regime shall be organised so far as is practicable to allow prisoners to practise their religion and follow their beliefs, to attend services or meetings led by approved representatives of such religion or beliefs, to receive visits in private from such representatives of their religion or beliefs and to have in their possession books or literature relating to their religion or beliefs.**
>
> **29.3 Prisoners may not be compelled to practise a religion or belief, to attend religious services or meetings, to take part in religious practices or to accept a visit from a representative of any religion or belief.**

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

[82.] Similar provisions regarding nutrition and freedom of religion or belief are included in the Committee of Ministers' recommendation[166] focusing on foreign prisoners:

> **30.1. Prisoners shall have the right to exercise or change their religion or belief and shall be protected from any compulsion in this respect;**
>
> **30.2. Prison authorities shall, as far as practicable, grant foreign prisoners access to approved representatives of their religion or belief.**

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

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

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

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

[161] Recommendation CM/Rec(2010)4 on human rights of members of armed forces adopted on 24 February 2010, Appendix H 40.
[162] *Kalaç v. Turkey* , judgment of 1 July 1997, §28.
[163] *Ibid.*, §29.
[164] Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, adopted on 11 January 2006. In its Commentary under Rule 29 on 'Freedom of thought, conscience and religion' it is stated that while the place of religion in prison has been regarded as unproblematic and limited itself to positive provision on how best to organise religion life in prison, the increase in some countries of prisoners with strong religious views requires a more principle approach as well as a positive requirement.
[165] Rules 29 (2)-(3) were cited in the above-mentioned case of *Jakobski v. Poland*.
[166] Recommendation CM/Rec (2012)12 concerning foreign prisoners, adopted on 10 October 2012.

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

[83.] In recent judgments the European Court of Human Rights has drawn the authorities' attention to the importance of the Committee of Ministers' recommendation on European Prison Rules, notwithstanding their non-binding nature[167]. The Court's case-law shows that where religion or belief dictates a particular diet, this should be respected by the authorities providing that this is not unreasonable or unduly burdensome.[168] Further, adequate provision should be made to allow detainees to take part in religious worship or to permit prisoners access to spiritual guidance.[169] However, the maintenance of good order and security in prison will normally readily be recognised as legitimate state interests. Article 9 cannot, for example, be used to require recognition of a special status for prisoners who claim that wearing prison uniform and being forced to work violate their beliefs.[170] Further, in responding to such order and security interests, a rather wide margin of appreciation is recognised on the part of the authorities. For example, the need to be able to identify prisoners may thus warrant the refusal to allow a prisoner to grow a beard, while security considerations may justify denial of the supply of a prayer-chain[171] or a book containing details of martial arts to prisoners, even in cases where it can be established that access to such items is indispensable for the proper exercise of a religious faith.

[84.] For instance, the Advisory Committee on the Framework Convention for the Protection of National Minorities expressed concern about the lack of efforts to allow persons belonging to national minorities in the penitentiary system to respect their culture and religion.[172] It called the authorities of a State Party to conduct to comprehensive awareness-raising and training activities among relevant public services, in particular law enforcement and the judiciary, as well as society in general to ensure better understanding of applicable international and national human rights guarantees.[173]

v. Conscientious objection to military service

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

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

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

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

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

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

---

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

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

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

[170] *McFeeley and Others v. the United Kingdom*, decision of 15 May 1980.

[171] *X v. Austria*, decision of 15 February 1965.

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

[173] *Ibid.*, §63.

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

[86.] In the case of *Bayatyan v. Armenia*[174] the Grand Chamber ruled for the first time that the failure to permit civilian service as an alternative could in certain circumstances violate Article 9. The Court considered that a shift in the interpretation of Article 9 was necessary and foreseeable and, in the light of the evolution of the law and practice of European States and of international agreements, it was no longer appropriate to read it in conjunction with Article 4 paragraph 3.b.[175] There was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection and the Convention, as a "living instrument", had to reflect such developments.

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

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

[88.] The manner in which the alternative service is regulated by the State has also been considered by other Council of Europe bodies.[176] In a collective complaint decision *Quaker Council for European Affairs against Greece*[177], the European Committee of Social Rights addressed the issue of alternative civilian service for conscientious objectors:

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

Furthermore, the European Committee of Social Rights clearly stated in its Conclusions regarding Estonia[178]:

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

[89.] The Commissioner for Human Rights has stressed that the right to conscientious objection to military service should be guaranteed in all parts of Europe.[179] He added that when this right is recognized by law or practice, there should be no differentiation among conscientious objectors on the

---

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

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

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

[177] Decision on the merits of 27 April 2001.

[178] European Committee of Social Rights, Conclusions 2008, Estonia, Article 1,2.

[179] Human Rights Comment by Thomas Hammarberg posted on 2 February 2012.

basis of the nature of their particular beliefs; and no discrimination against conscientious objectors because they have failed to perform military service; also, the alternative service should not be punitive in terms of having a much longer duration.

[90.] The Venice Commission has in a legal opinion regarding Armenia recalled that any form of control over alternative service should be of civilian nature and in order to alleviate any ambiguity, the amendment should explicitly state that the military have no supervisory role in the day-to-day operational supervision of those who perform alternative service. In addition, the authorities should make sure that any byelaw, other regulation or practical application measure is fully in line with the principle of civilian control over alternative service.[180]

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

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

[92.] A requirement to have religious faith disclosed in identity documents is incompatible with an individual's right not to be obliged to disclose his or her religion. In *Sinan Isik v. Turkey*[181] the Court found a violation of Article 9 which had arisen not from the refusal to indicate the applicant's faith ("Alevi" rather than "Islam") on his identity card but from the fact that his identity card contained an indication of religion, regardless of whether it was obligatory or optional. The Court underlined that the freedom to manifest one's religion had a negative aspect, namely the right not to be obliged to disclose one's religion.

[93.] However, there may be two sets of circumstances in which it may be justified to require such disclosure. First, a State may seek to ascertain the values and beliefs held by candidates for public employment on the grounds that they hold views incompatible with the office.[182] Yet, this may in turn involve an interference with freedom of expression under Article 10.[183] Secondly, an individual seeking to take advantage of a special privilege made available in domestic law on the grounds of belief may be expected to disclose and to justify his beliefs. This may occur, for example, in respect of application for recognition of conscientious objection to a requirement to carry out military service where such an exemption is recognised in domestic law.[184] In *Kosteski v."the former Yugoslav Republic of Macedonia"*[185], the applicant had been penalised for failing to attend his place of work on the day of a religious holiday. The Court observed as follows:

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

[180] CDL-AD(2011)051 Opinion on the draft law on amendments and additions to the law on alternative service of Armenia, adopted by the Venice Commission at its 89th Plenary Session (Venice, 16-17 December 2011), §38.
[181] Judgment of 2 February 2010.
[182] *Vogt v. Germany*, judgment of 26 September 1995, §§41-68 (disposal under Articles 10 and 11).
[183] For example, in *Lombardi Vallauri v. Italy*, judgment of 20 October 2009 (a university lecturer had been refused renewal of a contract for a teaching post at a denominational university since it was considered that he held views that were incompatible with the religious doctrine of the university in which he had worked for some 20 years). A violation of Article 10 was established on account of the failure by the university and by the domestic courts to explain how the applicant's views were liable to affect the interests of the university.
[184] See *N. v. Sweden*, decision of 11 November 1984; *Raninen v. Finland*, decision of 7 March 1996.
[185] Judgment of 13 April 2006.

> his claims. To the extent therefore that the proceedings disclosed an interference with the applicant's freedom of religion, this was not disproportionate and may, in the circumstances of this case, be regarded as justified in terms of the second paragraph, namely, as prescribed by law and necessary in a democratic society for the protection of the rights of others.

[94.] In the above case, the qualification "privilege or entitlement not commonly available", however, suggests a restricted application of this principle. For example, in respect of parents who seek to have their philosophical convictions taken into account in the provision of education for their children, education authorities may not probe too far into the beliefs of such parents. This situation arose in *Folgerø and Others v. Norway*, in which domestic arrangements allowing parents to request partial exemption from classes for their children were considered unsatisfactory in terms of Article 2 of Protocol No. 1, as interpreted in the light of Articles 8 and 9, since the system was capable of subjecting the parents concerned to a heavy burden with a risk of undue exposure of "intimate aspects of their own religious and philosophical convictions" and that the potential for conflict was likely to deter them from making such requests.[186]

[95.] Futhermore, requiring of elected representatives to take a religious oath against their conscience or beliefs upon election to Parliament is equivalent to requiring them to swear allegiance to a particular religion, which is not compatible with Article 9 of the Convention.[187]

[96.] Similarly, domestic law may not impose an obligation to support a religious organisation by means of taxation without recognising the right of an individual to leave the church and thus obtain an exemption from the requirement.[188] However, this principle does not extend to general legal obligations falling exclusively in the public sphere, and thus taxpayers may not demand that their payments are not allocated to particular purposes.[189]
One should also distinguish between taxes aimed at financing public functions performed by churches (*e.g.* operating cemeteries, administration of burials, maintaining buildings of historic value or holding registers of elderly persons) and taxes aimed at financing church functions of an exclusively religious character. If the total amount of the tax remains reasonably proportionate to the cost of the public functions performed by the church, one cannot say that levying of a reduced church tax on a non-member constitutes his contributing to the religious activities of the church incompatible with Article 9[190].

[97.] The Venice Commission recalls in its Guidelines for Legislative Reviews of Law Affecting Religion and Belief that conscientious objections may be grounds for refusing to take oaths or to perform jury service. To the extent possible, the State should attempt to provide reasonable alternatives that burden neither those with conscientious beliefs nor the general population.[191]

[98.] Finally, in its Resolution 1763 (2010) on the right to conscientious objection in lawful medical care, the Parliamentary Assembly dealt with the practice of health-care providers refusing to provide certain health services based on religious, moral or philosophical objections. Recognising the right of an individual to conscientiously object to performing a certain medical procedure, the Assembly invited Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services.[192]

vii. Medical treatment issues

[186] *Folgerø and Others v. Norway*[GC], judgment of 29 June 2007, §§98 and 100.
[187] *Buscarini and Others v. San Marino* cited above.
[188] *Darby v. Sweden*, judgment of 23 October 1990.
[189] *C. v. the United Kingdom*, decision of 15 December 1983.
[190] *Bruno v. Sweden*, decision of 28 August 2001.
[191] Guidelines for Legislative Reviews of Laws Affecting Religion or Belief, adopted by the Venice Commission at its 59th Plenary Session (Venice, 18-19 June 2004), III. L.
[192] PACE Resolution 1763 (2010) on the right to conscientious objection in lawful medical care, adopted on 7 October 2010, §4.

[99.] In the case of *Pretty v. the United Kingdom* the Court considered that the firm views of the applicant concerning assisted suicide did not involve a form of manifestation of a religion or belief, through worship, teaching, practice or observance as described in the second sentence of Article 9, paragraph 1, and that this issue was to be seen as the applicant's commitment to the principle of personal autonomy, more appropriate for discussion under Article 8 of the Convention.[193]

[100.] Recommendation 1418 (1999) of the Parliamentary Assembly on the protection of the human rights and dignity of the terminally ill and the dying[194] recommend *inter alia*:

> 9. […]the Committee of Ministers encourage the member States of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects: […]
> c. by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while: […]
> i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member States, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally';
> ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
> iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death."

[101.] Situations may occur in which objection is taken to necessary medical treatment on grounds of conscience or belief (for example, to procedures necessitating a blood transfusion). The absolute right of an adult, who suffers from no mental incapacity, to make decisions concerning medical treatment, including the right to choose not to receive treatment, even when this may involve a risk to life is respected.[195] Similarly, this principle of autonomy or self-determination is recognised by Article 8.[196]

[102.] Article 8 further encompasses the exercise of parental responsibilities including the right to take decisions concerning the upbringing of their children, again including decisions concerning medical treatment.[197] A similar case could be made for state intervention in respect of adults whose state of health renders them either vulnerable to undue pressure or who cannot be deemed to be fully competent to take decisions concerning their treatment.[198]

[103.] The Venice Commission recalls in its Guidelines for Legislative Reviews of Law Affecting Religion and Relief that some religious and belief communities reject one or more aspects of medical procedures that are commonly performed. While many States allow adults to make decisions whether or not to accept certain types of procedures, States typically require that some medical procedures be performed on children despite parental wishes. To the extent that the State chooses to override parental preferences for what the State identifies as a compelling need, and which States legitimately may choose to do, the laws should nevertheless be drafted in ways that are respectful of those who have moral objections to medical procedures, even if the law does not grant the exemption that they wish.[199] The Venice Commission also stated in a legal opinion[200]:

---

[193] *Pretty v. the United Kingdom*, judgment of 29 April 2002, §82.
[194] Adopted by the Parliamentary Assembly on 25 June 1999.
[195] *Jehovah's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §§137-138.
[196] In *Avilkina and Others v. Russia*, judgment of 6 June 2013, the Court examined one further aspect of the refusal to undergo the blood transfusion. The Court found a violation of Article 8 of the Convention (right to respect for private and family life) on the account that the data on the refusals of the applicants', who were Jehovah's Witnesses', to undergo blood transfusion had been disclosed by the hospital to the prosecutor's office in the context of their investigation aimed at protecting public health.
[197] See *Nielsen v. Denmark*, judgment of 28 November 1988, §61: "Family life in this sense, and especially the rights of parents to exercise parental authority over their children, having due regard to their corresponding parental responsibilities, is recognised and protected by the Convention, in particular by Article 8. Indeed the exercise of parental rights constitutes a fundamental element of family life."
[198] Cf *Kokkinakis v. Greece*; *Keenan v. the United Kingdom*, judgment of 3 April 2001, §§88-101. But cf *Riera Blume and Others v. Spain*, judgment of 14 October 1999, §§31-35 (complaints that "de-programming treatment" involved a violation of Article 9 avoided on account of a finding of violation of Article 5).
[199] Guidelines "L. Exemptions from laws of general applicability"
[200] CDL-AD(2010)054 Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §§97-98.

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

viii. Proselytism

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

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

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

[106.] However this right is not absolute, and may be limited where it can be shown by the State that this is based upon considerations of public order or the protection of vulnerable individuals against undue exploitation. The jurisprudence distinguishes between "proper" and "improper" proselytism, a distinction reflected in other documents adopted by Council of Europe institutions such as Parliamentary Assembly Recommendation 1412 (1999) on the illegal activities of sects which calls for domestic action against "illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature", the provision and exchange between States of information on such sects, and the importance of the history and philosophy of religion in school curricula with a view to protecting young persons.[201]

[107.] In the already mentioned case of *Kokkinakis v. Greece* a Jehovah's Witness had been sentenced to imprisonment for proselytism, an offence specifically prohibited both by the Greek Constitution and by statute. The Court at the outset accepted that the right to try to convince others to convert to another faith was included within the scope of the guarantee, failing which "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter". While noting that the prohibition was prescribed by law and had the legitimate aim of protecting the rights of others, the Court could not, in the particular circumstances, accept that the interference had been shown to have been justified as "necessary in a democratic society" for the protection of the rights and freedoms of others. In its view, a distinction had to be drawn between "bearing Christian witness" or evangelicalism and "improper proselytism" involving undue influence or even force. The domestic courts had assessed the criminal liability of the applicant by merely reproducing the wording of the legislation and did not sufficiently specify in what way the accused had attempted to convince his neighbour by improper means. The failure of the domestic courts to specify the reasons for the conviction meant that it was impossible to show that there had been a pressing social need for the conviction.[202] By contrast, in *Larissis and Others v. Greece*[203], the conviction of senior officers who were members of the Pentecostal Faith for the proselytism of three airmen under their command was deemed not to be a breach of Article 9 in light of the characteristics of military life and of the crucial nature of military hierarchical structures, which the Court accepted could potentially involve a risk of harassment of a subordinate where the latter sought to withdraw from a conversation about religion initiated by a superior officer.

[201] PACE Recommendation 1412 (1999) on the illegal activities of sects, §10.
[202] *Kokkinakis v. Greece*, §§48-49.
[203] Judgment of 24 February 1998.

[108.] Protection against coercion or indoctrination may also arise in other ways. For example, as noted below in accordance with Article 2 of Protocol No. 1 the philosophical or religious convictions of parents must be respected by the State when providing education, and thus a parent may prevent the "indoctrination" of his child in school.[204]

[109.] The Venice Commission recalls in its Guidelines for legislative reviews of laws affecting religion or belief that the issue of proselytism and missionary work is a sensitive one in many countries. However, it is important to remember that, at its core, the right to express one's views and describe one's faith can be a vital dimension of religion. The right to express one's religious convictions and to attempt to share them with others is covered by the right to freedom of religion or belief. Moreover, it is covered by the right to freedom of expression under Article 10 as well. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved.[205] The Venice Commission has further recommended that the offence [coercion] ought to be defined in religion-neutral terms to focus on inappropriate coercion, pressure tactics, abuse of position, deception, and so forth. There is a hazard in focusing on proselytism, even if it is restricted to a vague notion such as "improper proselytism", because of the tendency of any such norm to be applied in discriminatory ways against smaller and less popular religions.[206]

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

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

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

[111.] As explicitly stated in the second sentence of the article the right of parents to respect for their religious and philosophical convictions in the education and teaching of their children belongs to the parents of a child and not to the child itself[207] or to any school or religious association.[208] However the duty to respect any such "convictions" of parents is subordinate to the primary right of a child to receive education[209], and thus the provision does not provide for the recognition of a parent's wish, for example, that a child is given a general exemption from attending school on Saturdays on religious grounds,[210] or that a child is allowed to be educated at home rather than in a school.[211]

[112.] The meaning of the term "philosophical convictions" employed in the second sentence of Article 2 of Protocol No. 1 was interpreted by the Court in its judgment in the case of *Campbell and Cosans v. United Kingdom*[212] as convictions which are worthy of respect in a "democratic society" and are not incompatible with human dignity; in addition, they must not conflict with the fundamental right of the child to education, the whole of Article 2 being dominated by its first sentence. The Court has not in further detail defined the adjective "religious", other than applying it to the convictions of all who profess a recognised religion[213]. The term "conviction", taken on its own, is not synonymous with the words "opinions" and "ideas". It denotes views that attain a certain level of cogency, seriousness, cohesion and importance.[214] It also appears to exclude implicitly the "religious"

[204] *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976. See also *Angeleni v. Sweden*, decision of 3 December 1986 and *C.J., J.J and E.J. v. Poland*, decision of 16 January 1996.
[205] CDL-AD(2004)028 Guidelines for legislative reviews of laws affecting religion or belief, p.13.
[206] CDL-AD(2010)054 Interim joint opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §61.
[207] *Eriksson v. Sweden*, decision of 16 January 1992, §93.
[208] *Ingrid Jordebo Foundation of Christian Schools and Ingrid Jordebo v. Sweden*, decision of the 6 March 1987.
[209] *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, judgment of 7 December 1976, §50.
[210] *Martins Casimiro and Cerveira Ferreira v. Luxembourg*, decision of 27 April 1999.
[211] *Konrad and Others v. Germany*, decision of 11 September 2006.
[212] Judgment of 25 February 1982, §36.
[213] *Valsamis v. Greece*, judgment of 18 December 1996, §27.
[214] *Valsamis v. Greece*, §§25 and 27, and *Campbell and Cosans*, §§36-37.

convictions of the members of a sect and beliefs which do not attain a certain level of cogency, seriousness, cohesion and importance from the scope of Article 2 of Protocol No. 1.[215]

[113.] The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State.[216]

[114.] The Court resumed the general principles developed under Article 2 of Protocol No. 1 in the case of *Folgerø and Others v. Norway*,[217] where it indicated in particular the following:

- The two sentences of Article 2 of Protocol No. 1 must be interpreted not only in the light of each other but also, in particular, of Articles 8, 9 and 10 of the Convention.[218]
- It is on to the fundamental right to education that is grafted the right of parents to respect for their religious and philosophical convictions, and the first sentence does not distinguish, any more than the second, between State and private teaching.[219]
- Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire state education programme.[220]
- It is in the discharge of a natural duty towards their children - parents being primarily responsible for the "education and teaching" of their children - that parents may require the state to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.[221]
- The setting and planning of the curriculum fall in principle within the competence of the Contracting States.[222] In particular, the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable.[223]
- The State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions[224] and the competent authorities have a duty to take the utmost care to see to it that parents' religious and philosophical convictions are not disregarded at this by a given school or teacher by carelessness, lack of judgment or misplaced proselytism.[225]

[115.] Article 2 of Protocol No. 1 does not embody any right for parents that their child be kept ignorant about religion and philosophy in their education.[226] The Court also noted that it remains, in principle, within the national margin of appreciation left to the States under Article 2 of Protocol No. 1 to decide whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted.[227]

[116.] The obligation on Contracting States to respect the religious and philosophical convictions of parents does not apply only to the content of teaching and the way it is provided; it binds them "in the exercise" of all the "functions" – in the terms of the second sentence of Article 2 of Protocol No. 1 – which they assume in relation to education and teaching[228]. That includes without any doubt the organisation of the school environment where domestic law attributes that function to the public

[215] *Hasan Zengin v. Turkey*, judgment of 9 October 2007.
[216] *Campbell and Cosans*, cited above, §37 (a).
[217] §84.
[218] *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, §52.
[219] *Ibid.*, §50.
[220] *Ibid*., §51.
[221] *Ibid*., §52.
[222] *Valsamis v. Greece*, §28.
[223] *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, §53.
[224] *Ibid.*
[225] *Kjeldsen, Busk Madsen and Pedersen*, §54.
[226] *Folgerø and Others v. Norway*, §89.
[227] *Grzelak v. Poland*, judgment of 15 June 2010, §104.
[228] *Lautsi and Others v. Italy* [GC], judgment of 18 March 2011, §59; *Folgerø*, cited above, §84, essentially *Kjeldsen, Busk Madsen and Pedersen*, cited above, §50; *Valsamis v. Greece*, 18 December 1996, §27; *Hasan and Eylem Zengin*, cited above, §49.

authorities. The decision whether religious symbols should be present in State-school classrooms also forms part of these functions and, accordingly, falls within the scope of the second sentence of Article 2 of Protocol No. 1.[229]

[117.] In the case of *Lautsi and Others v. Italy*, the Grand Chamber of the Court considered that the decision whether crucifixes should be present in State-school classrooms was, in principle, a matter falling within the margin of appreciation of the respondent State. It considered that the fact that crucifixes in State-school classrooms in Italy conferred on the country's majority religion predominant visibility in the school environment was not in itself sufficient to denote a process of indoctrination. A crucifix on a wall is an essentially passive symbol and this point is of importance, particularly having regard to the principle of neutrality. It cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities. On the other hand there was nothing to suggest that the authorities were intolerant toward pupils with other religious affiliations or non-believers. The applicant had retained her right as a parent to enlighten and advise her children and to guide them on a path in line with her own philosophical convictions. Accordingly, the Court found no violation of Article 2 of Protocol No. 1.[230]

[118.] Consequently, one can conclude that with respect to the question of pluralism and objectiveness, arrangements in education and teaching may indeed reflect historical tradition and dominant religious adherence, and therefore they fall within the State's margin of appreciation[231], for instance whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted, or in planning and setting the curriculum, or as regards the display of a religious symbol on classrooms, without this being seen as a departure from the principles of pluralism and objectivity amounting to indoctrination[232]. However, when the "information and knowledge" on the syllabus of the courses complained of are not "conveyed in an objective, critical and pluralistic manner", the state authorities are under an obligation to grant children "full exemption" from these lessons in accordance with the parents' religious or philosophical convictions, since a mere partial exemption does not suffice to ensure respect for these convictions. [233]

[119.] One of the core objectives of the Framework Convention for the Protection of National Minorities is to maintain and develop the culture of persons belonging to national minorities, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage. Of crucial importance in this context is the respect of the rights of parent's to educate their children in conformity with their own religious and philosophical convictions.

> Article 5
> **1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.**
> […]
>
> Article 6

[229] *Lautsi and Others v. Italy*, §§63 and 65.
[230] *Lautsi and Others v. Italy* [GC], judgment of 18 March 2011, §§70, 72, 74, 75
[231] Refer on this point, *mutatis mutandis*, to the previously cited *Folgerø* and *Zengin* judgments. In the *Folgerø* case, in which the Court was called upon to examine the content of "Christianity, religion and philosophy" (KRL) lessons, it found that the fact that the syllabus gave a larger share to knowledge of the Christian religion than to that of other religions and philosophies could not in itself be viewed as a departure from the principles of pluralism and objectivity amounting to indoctrination. It explained that in view of the place occupied by Christianity in the history and tradition of the respondent State – Norway – this question had to be regarded as falling within the margin of appreciation left to it in planning and setting the curriculum (see *Folgerø*, cited above, § 89). The Court reached a similar conclusion in the context of "religious culture and ethics" classes in Turkish schools, where the syllabus gave greater prominence to knowledge of Islam on the ground that, notwithstanding the State's secular nature, Islam was the majority religion practised in Turkey (see *Zengin*, cited above, § 63) - see *Lautsi and Others v. Italy*, §71.
[232] *Folgerø and Others v. Norway* [GC], §89; *Lautsi and Others v. Italy*, §§5, 66 and 70-74, *Grzelak v. Poland*, judgment of 15 June 2010, §104
[233] *Folgerø and Others v. Norway* [GC], §102. See also *Hasan and Eylem Zengin v. Turkey*, §§59-61 and 70, ruling upheld in the case of *Mansur Yalçin and Others v. Turkey*, judgment of 16 September 2014 (despite the changes introduced in the programme of religious culture and ethics, the parents' beliefs were still not fully respected in the education system).

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

[120.] The Framework Convention is of relevance not only in guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education (right to education) but also in setting standards on how such education should be shaped in terms of content as well as form (rights in education) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.[234]

[121.] Under the above provisions of the Framework Convention, States Parties need to review regularly the entire curriculum in order to ensure that the diversity of cultures and identities is reflected and that tolerance and intercultural communication are promoted.[235]

[122.] In its Commentary on Education under the Framework Convention, the Advisory Committee makes reference also to the right to education in Article 2 of Protocol No.1 to the European Convention on Human Rights. Pursuant to Article 17 of the European Convention, on the prohibition of abuse of rights, religious teaching or education, or indeed any other kind of education, should not lead to the violation of the rights of others (whether they are of the same or different religious beliefs). All school subjects, including mathematics, gymnastics, music and arts will also need to be reviewed and adapted from a multicultural and intercultural perspective. [236]

[123.] The effective implementation of the basic principles of tolerance and intercultural dialogue, of dissemination of knowledge to minorities as well as majorities, of equal access to education, and of free and compulsory education requires also that many other elements of identity, such as religion, geographical location, gender, are taken into account.[237] Education has to be flexible so as to adapt to the needs of changing societies and communities and to respond to the needs of students within their diverse social and cultural settings.[238]

[124.] In this respect, the Advisory Committee called, for instance, the authorities of a State Party:
- to ensure that the constitutional guarantees of freedom of conscience and religion are strictly respected and effectively protected everywhere on the territory and that persons belonging to minorities, and minority religions, are not coerced to adopt practices related to a particular faith. [239]
- to take further steps to ensure that existing practices and curricula concerning religious education do not result in imposing a religion on pupils from another faith group.[240]
- to broaden schooling options, including in terms of non-denominational and multi-denominational schools, in a manner that ensured that the school system reflects the growing cultural and religious diversity of the country. [241]

[125.] While the introduction of elements of intercultural knowledge and dialogue in curricula as well as the need to review curricula, especially in the field of history and religion, have often been

[234] Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Summary Part I 'Introduction'.
[235] Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Section 1.4 'Importance of Articles 4 - 6 of the Framework Convention'
[236] *Ibid*.
[237] *Ibid*.
[238] *Ibid*., section 2.3 'Article 14 of the Framework Convention'.
[239] Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §145. See also Committee of Ministers' Resolution CM/ResCMN(2013)1 of 30 April 2013 on the implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation.
[240] For more details see the third Opinion of the Advisory Committee on the United Kingdom, adopted on 30 June 2011, §§133-134.
[241] Second Opinion of the Advisory Committee on Ireland, adopted on 6 October 2006, §100. See also Resolution CM/ResCMN(2007)10 of 20 June 2007 on the implementation of the Framework Convention for the Protection of National Minorities by Ireland.

included in the Opinions of the Advisory Committee, it must be noted that the Advisory Committee has not had the occasion to pronounce extensively on the issue of religious education or education offered by religious institutions[242]. Yet, where public schools provide denominational religious education organised by each religion according to its own system of principles and beliefs, one should bear in mind that its curriculum is drafted by the respective religious organisations. This matter is closely linked with the principle of the mutual autonomy and independence of State and religion, the obligation of States to refrain from assessing the legitimacy of the religious views[243] and their obligation to respect the freedom to manifest religion or belief, in *inter alia*, teaching.

[126.] In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to promote reasonable accommodation within the principle of indirect discrimination so as to respect the right of parents to provide their children with an education in conformity with their religious or philosophical convictions, while guaranteeing the fundamental right of children to education in a critical and pluralistic manner.[244]

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

[127.] The Court has examined several cases involving the resolution of child custody and access by reference to religious belief under Articles 8 and 14 of the Convention holding that the determination of child custody is an aspect of family life.[245] In the case of *Vojnity v. Hungary*[246] concerning the total removal of a father's access rights on the grounds that his religious convictions had been detrimental to his son's upbringing, the Court concluded that there was no reasonable relationship of proportionality between a total ban on the applicant's access rights and the aim pursued, namely the protection of the best interest of the child, and that consequently the applicant had been discriminated against on the basis of his religious convictions in the exercise of his right to respect for family life.

[128.] The Commissioner for Human Rights stressed the importance that[247]:

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

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

[242] Commentary on education under the Framework Convention for the Protection of National Minorities (2006), Section 1.4 'Importance of Articles 4-6 of the Framework Convention'.
[243] See *Manoussakis and Others v. Greece*, judgment of 26 September 1996, §47; *Hasan and Chaush v. Bulgaria*, §78; *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], judgment of 13 February 2003, §1.
[244] PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §§6.2 and 6.2.3.
[245] *Hoffmann v. Austria*, judgment of 23 June 1993; *Palau-Martinez v. France*, judgment of 16 March 2004; *Ismailova v. Russia*, judgment of 6 September 2007.
[246] Judgment of 12 February 2013.
[247] Viewpoint on 'Religious leaders' posted by the former Commissioner for Human Rights, Thomas Hammarberg.

philosophical purport differed from their parents in their convictions. To date, the Court has not had to consider this aspect of the right to education. [248]

[130.] The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)[249] clearly condemns female genital mutilation in its Article 38 by criminalising its performance or any behaviour inciting the procedure or coercing a girl into it[250].

[131.] In respect of the circumcision of boys, the Advisory Committee on the Framework Convention for the Protection of National Minorities, for instance, called the authorities of a State Party to maintain their open dialogue with minority representatives on this issue and to ensure that outstanding queries are clarified in conformity with a judgment of the national Supreme Court which held that circumcisions performed in a medically appropriate way and without causing unnecessary pain are not illegal or punishable.[251]

B. State relations with religious communities

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

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

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

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

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

and in Article 8:

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

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

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

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

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

i. Autonomy and rights of religious communities

[135.] Religious communities traditionally and universally **exist in the form of organised structures**. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.[252]

[136.] Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the right of believers to freedom of religion encompasses the expectation that believers will be allowed to associate freely, without arbitrary state intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords.[253] It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. "Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable".[254]

[137.] Furthermore, States must not interfere in the freedom of religion of the individual members of religious communities on the ground that their association has not been formally registered. To admit the contrary would amount to the exclusion of minority religious beliefs which are not registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe.[255]

[138.] Similarly, the Venice Commission has also noted with regard to the autonomy of religious communities that state permission may not be made a condition for the exercise of the freedom of religion or belief. The freedom of religion or belief, whether manifested alone or in community with others, in public or in private, cannot be made subject to prior registration or other similar procedures, since it belongs to human beings and communities as rights holders and does not depend on official authorization.[256] Hence, it strongly recommended specifying the status of religious entities which do not want to register in a non-discriminatory way as required by international standards.[257]

[139.] As to the scope of the autonomous rights, the Venice Commission has stressed that religious communities must enjoy autonomy and self-determination on any matters regarding issues of faith, belief or their internal organization as a group.[258] The State must respect the autonomy of religious or belief communities. States should observe their obligations by ensuring that national law leaves it to the religious or belief community itself to decide on its leadership, its internal rules, the substantive

[252] *Hasan and Chaush v. Bulgaria* [GC], judgment of 26 October 2000, §62.
[253] *Metropolitan Church of Bessarabia and Others v. Moldova*, judgment of 13 December 2001, §118; *Hasan and Chaush v. Bulgaria*, §62; *Supreme Holy Council of the Muslim Community v. Bulgaria*, judgment of 16 December 2004, §73; *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, judgment of 22 January 2009, §103; *Sindicatul Păstorul Cel Bun" v. Romania* [GC], judgment of 9 July 2013, §136.
[254] *Hasan and Chaush v. Bulgaria*, §62; *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §103.
[255] *Masaev v. Moldova*, judgment of 12 May 2009, §26.
[256] CDL-AD(20014)023 Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13-14 June 2014), §10.
[257] CDL-AD(2007)005 Opinion on the draft Law on the Legal Status of a Church, a Religious Community and a Religious Group of "the Former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007), §§35-38.
[258] CDL-AD(2012)022, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and OSCE/ODIHR, §72.

content of its beliefs, the structure of the community and methods of appointment of the clergy and its name and other symbols.[259]

[140.] For domestic law to meet the above requirements it must afford a measure of **legal protection against arbitrary interferences** by public authorities with the rights safeguarded by the Convention. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise. The level of precision required of domestic legislation – which cannot in any case provide for every eventuality – depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed.[260]

[141.] Except for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.[261] Also, any State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would constitute an interference with freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership.[262]

[142.] Intervening in internal disputes between groups of adherents may in some exceptional cases be considered as pursuing the legitimate aim of preventing disorder and protecting the rights and freedoms of others. However, although a certain amount of regulation may be necessary in order to protect individuals' interests and beliefs, state authorities must take care to discharge their duty of neutrality and impartiality as the autonomy of religious communities constitutes an essential component of pluralist democratic society where several religions or denominations of the same religion co-exist.[263]

[143.] The autonomy of religious communities is manifested in the state recognition of the decisions of ecclesiastical bodies. In the case of *Pellegrini v. Italy* the Court was, however, called upon to consider issues arising from the civil enforcement of decisions of religious bodies concerning application of Article 6's guarantee of fair hearings. The Court held that national courts have, before authorising enforcement of a decision, a duty to satisfy themselves that the relevant proceedings before a religious authority fulfil the guarantees of Article 6. A review of that kind is required where a decision in respect of which enforcement is requested emanates from the courts of a country which does not apply the Convention, and it is especially necessary where the implications of a declaration of enforceability are of capital importance for the parties.[264]

[144.] The autonomous existence for a religious community is also emphasised by the ability to establish a legal entity in order to act collectively in a field of mutual interest and exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention.[265] A refusal to recognise legal-entity status has also been found to constitute interference with the applicants' right to freedom of religion under Article 9 of the Convention.[266]

---

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

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

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

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

[263] *Mirolubovs and Others v. Latvia*, §§86-87.

[264] Judgment of 20 July 2001, §§40-48.

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

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

[145.] As the Venice Commission has noted in respect of privileges and benefits of religious/belief organisations, in general, out of deference for the values of freedom of religion or belief, laws governing access to legal personality should be structured in ways that are facilitative of freedom of religion or belief; at a minimum, access to the basic rights associated with legal personality - for example, opening a bank account, renting or acquiring property for a place of worship or for other religious uses, entering into contracts, and the right to sue and be sued should be available without excessive difficulty. In many legal systems, there are a variety of additional legal issues that have substantial impact on religious life that are often linked to acquiring legal personality - for example, obtaining land use or other governmental permits, inviting foreign religious leaders, workers and volunteers into a country, arranging visits and ministries in hospitals, prisons and the military, eligibility to establish educational institutions (whether for educating children or for training clergy), eligibility to establish separate religiously motivated charitable organisations, and so forth. In many countries, a variety of financial benefits, ranging from tax exempt status to direct subsidies may be available for certain types of religious entity. In general, the mere making any of the foregoing benefits or privileges available does not violate rights to freedom of religion or belief. However, care must be taken to assure that non-discrimination norms are not violated.[267]

[146.] One of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 must be seen not only in the light of Article 11, but also in the light of Article 6 of the Convention.[268]

[147.] To establish "victim" status within the meaning of Article 34 of the Convention and satisfy admissibility criteria[269], a religious community may be recognised as having the **right to challenge an interference** with respect for religious belief when it can show it is bringing a challenge **in a representative capacity** on behalf of its members.[270] However, recognition of representative status will not extend to a commercial body.[271] Further, the recognition of representative status in respect of an association of members appears only to extend to religious belief and not to allegations of interference with thought or conscience.[272]

[148.] Where the individual and collective aspects of Article 9 may conflict, the **collective manifestation of belief** prevails. This is due to the fact that "a church is an organised religious community based on identical or at least substantially similar views"[273], and thus the religious organisation "itself is protected in its rights to manifest its religion, to organise and carry out worship, teaching, practice and observance, and it is free to act out and enforce uniformity in these matters"[274]. In consequence, it will be difficult for a member of the clergy to maintain that he or she has the right to manifest an own individual belief in a manner contrary to the standard practice of his or her church.[275] Concerning more specifically the internal autonomy of religious groups, Article 9 of the Convention does not enshrine a right of dissent within a religious community[276]. In the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual's freedom of religion is exercised through his or her freedom to leave the community.[277] On the other hand, in line with the principle of religious autonomy, religious

[267] CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, pp.11-12.
[268] CDL-AD(2005)037, Opinion on the Draft Law regarding the Religious Freedom and the General Regime of Religions in Romania, §23.
[269] *Metropolitan Church of Bessarabia and Others v. Moldova*, §101; *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, judgment of 31 July 2008, §79.
[270] *X and Church of Scientology v. Sweden*, decision of 5 May 1979; *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §31.
[271] *Kustannus OY, Vapaa ajattelija AB and Others v. Finland*, decision of 15 April 1996.
[272] *Verein "Kontakt-Information-Therapie" and Hagen v. Austria*, decision of 12 October 1988.
[273] *X v. Denmark*, decision of 8 March 1976.
[274] *Ibid*.
[275] *X v. the United Kingdom*, decision of 12 March 1981; *Knudsen v. Norway*, decision of 8 March 1985.
[276] *Fernández Martínez v. Spain* [GC], judgment of 12 June 2014, §128.
[277] *Case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, §137; *Karlsson v. Sweden*, decision of 8 September 1988; *Spetz and Others v. Sweden*, decision of 12 October 1994; *Williamson v. the United Kingdom*, decision of 17 May 1995. In any event, the action complained of must involve exercise of state authority rather than action taken by an ecclesiastical body. Thus where a dispute relates to a matter such as use of the liturgy, state responsibility will not be engaged as this involves a challenge to a matter of internal church administration taken by a body that is not a governmental agency, *Finska forsamlingen i Stockholm and Teuvo*

community cannot be obliged by the State to admit new members or to exclude existing ones[278] or to entrust someone with a particular religious duty[279].

[149.] An important aspect of the autonomy of religious communities manifests itself in the area of employment law. This is the **freedom to choose employees** according to criteria specific to the religious community in question. The Court acknowledges that as a consequence of their autonomy religious communities can demand a certain degree of loyalty from those working for them or representing them. In this context the Court has already considered that the nature of the post occupied by those persons is an important element to be taken into account when assessing the proportionality of a restrictive measure taken by the State or the religious organisation concerned. In particular, the specific mission assigned to the person concerned in a religious organisation is a relevant consideration in determining whether that person should be subject to a heightened duty of loyalty[280]. For instance, in the Court's view, it is not unreasonable for a church or religious community to expect particular loyalty of religious education teachers in so far as they may be regarded as its representatives. The existence of a discrepancy between the ideas that have to be taught and the teacher's personal beliefs may raise an issue of credibility if the teacher actively and publicly campaigns against the ideas in question[281].

[150.] The freedom to choose employees is however not absolute as the case-law of the Court shows in two judgments of 23 September 2010 both concerning the dismissal by the employing churches on grounds of adultery. The Court held that where questions concerning the relationship between State and religions are at stake, questions on which opinion in a democratic society may reasonably differ widely, the role of the national decision-making body must be given special importance[282] and the task of the Court in these cases was thus to ascertain whether the national employment tribunals had struck a fair balance between the applicants' right under Article 8 and the churches' right under Articles 9 and 11.[283]

[151.] In the case of *Sindicatul "Păstorul cel Bun" v. Romania*[284], the Court applied the principle of **autonomy of religious organisations in the context of trade-union rights**. The applicants, who were Orthodox priests and lay employees of the Romanian Orthodox Church, alleged that the refusal of the State authorities to register their trade union impaired the very essence of their freedom of association under Article 11.

> 161. […] the Archdiocese, which was opposed to its recognition, maintained that the aims set out in the union's constitution were incompatible with the duties accepted by priests by virtue of their ministry and their undertaking towards the archbishop. It asserted that the emergence within the structure of the Church of a new body of this kind would seriously imperil the freedom of religious denominations to organise themselves in accordance with their own traditions, and that the establishment of the trade union

---

Hautaniemi v. Sweden, decision of 11 April 1996. This is so even where the religious body involved is recognised by domestic law as enjoying the particular status of an established church. *X v. Denmark*, decision of 8 March 1976.

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

[279] *Fernández Martínez v. Spain*, §129.

[280] *Fernández Martínez v. Spain*, cited above, §131.

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

[282] *Obst v. Germany*, §44; *Schüth v. Germany*, §58.

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

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

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

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

[284] Judgment [GC] of 9 July 2013.

would therefore be likely to undermine the Church's traditional hierarchical structure; for these reasons, it argued that it was necessary to limit the trade-union freedom claimed by the applicant union.

[152.] The Grand Chamber took the view that the domestic court's decision had simply applied the principle of the autonomy of religious communities. The court's refusal to register the union for failure to comply with the requirement of obtaining the archbishop's permission was a direct consequence of the right of the religious community concerned to make its own organisational arrangements and to operate in accordance with the provisions of its own Statute. The Court held that in refusing to register the applicant union, the State had simply declined to become involved in the organisation and operation of the Romanian Orthodox Church, thereby observing its duty of denominational neutrality under Article 9 of the Convention.[285] Having regard to the various arguments put forward before the domestic courts by the representatives of the Romanian Orthodox Church, the Court considered that there had therefore been no violation of Article 11 of the Convention.

[153.] With regard to the prohibition in some member States of the existence of political parties on ethnic, racial or religious lines, the Advisory Committee of the Framework Convention of National Minorities urged, for instance, the authorities of a State Party to remove all the existing obstacles preventing the interested groups from exercising their right to peaceful assembly and association, guaranteed by the Framework Convention.[286]

[154.] The Advisory Committee has also encouraged the authorities of a State Party to ensure that the relevant provisions of the law are interpreted so that religious associations can write their names in an alphabet of their choice except in cases where it is necessary, for a legitimate purpose, to require also the use of the Latin script.[287]

[155.] The Venice Commission notes that autonomy issues are particularly likely to arise in contexts where religious or belief organisations are engaged in activities such as operating hospitals, schools, or businesses and where individuals assert that the organisations discriminate (on grounds such as gender or membership in the religion). Although differential treatment may be permissible, it is appropriate to draw attention to the competing values of religious autonomy for institutions and the right of citizens to be free from discrimination on the grounds of religion – particularly when the employers receive public financing or tax deductions for their activities.[288]

ii. Registration and recognition

[156.] As mentioned above the right of religious communities to legal personality status is vital to the full realisation of the right to freedom of religion and belief. A number of key aspects of organised community life in this area would become impossible or extremely difficult without access to legal personality.[289]

[157.] The Venice Commission stressed in its Joint Guidelines on the Legal Personality of Religious or Belief Communities that regardless of the system used to govern access to legal personality, and the particular terms which may be used to describe the forms of legal personality open to religious or belief communities, national law in this area must comply with international human rights instruments.[290] This means, amongst others, that religious or belief organisations must be able to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities.[291]

---

[285] *Sindicatul "Păstorul cel Bun" v. Romania*[GC], judgment of 9 July 2013, §§166 and 168.
[286] Second Opinion of the Advisory Committee on Bulgaria, adopted on 18 March 2010, §130; Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §140.
[287] Third Opinion of the Advisory Committee on Estonia, adopted on 1 April 2011, §§86-88.
[288] CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, II.D.
[289] CDL-AD(2014)023, Joint Guidelines on the legal personality of religious or belief communities by the Venice Commission and OSCE/ODIHR, §20.
[290] *Ibid*., §23.
[291] *Svyato-Mykhaylivska Parafiya v. Ukraine*, judgment of 14 June 2007, §123. See also European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124).

[158.] A system of state registration for religious communities to obtain recognition as a legal entity is thus not in itself incompatible with freedom of thought, conscience and religion.[292] States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their obligations under the Convention and subject to review by the Convention institutions.[293] The State must be careful to maintain a position of strict neutrality and be able to demonstrate it has proper grounds for refusing recognition.[294] To this end, the involvement in this procedure of another ecclesiastical authority which itself enjoys state recognition will not be appropriate.[295]

[159.] The Venice Commission noted that legislation should not make obtaining legal personality contingent on a religious or belief community having an excessive minimum number of members. States should ensure that they take into account the needs of smaller religious and belief communities, and should be aware of the fact that high minimum number provisions make the operational activities of newly established religious communities unnecessarily difficult.[296]

[160.] The process for registration must guard against unfettered discretion and avoid arbitrary decision-making.[297] A State must always take care when it appears to be assessing the comparative legitimacy of different beliefs.[298]

[161.] Where official recognition is necessary, mere state tolerance of a religious community is unlikely to suffice.[299] The risk with such requirements is that these may be applied in a discriminatory manner with a view to restricting the spread of minority faiths.[300] The interplay between Article 9's guarantees for the collective manifestation of belief and Article 11's protection for freedom of association, taken along with the prohibition of discrimination in the enjoyment of Convention guarantees as provided for by Article 14, is thus of considerable significance in resolving questions concerning refusal to confer official recognition.

[162.] In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to allow religious communities to be registered as a religious organisation, and to establish and maintain meeting places

---

[292] *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, judgment of 8 April 2014, §76; *Masaev v. Moldova*, §26.
[293] *Sidiropoulos and Others v. Greece*, §40.
[294] *Metropolitan Church of Bessarabia and Others v. Moldova*, §125 (absence of any evidence as the respondent government had submitted that the church was engaged in political activities contrary to Moldovan public policy or to its own stated religious aims, or that state recognition might constitute a danger to national security and territorial integrity); *Jehovah's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §160 (no appropriate factual basis for the allegations by the authorities that the religious organisation had forced families to break up, that it had incited its followers to commit suicide or to refuse medical care, that it had impinged on the rights of members, parents who were not Jehovah's Witnesses and their children, and that it had encouraged members to refuse to fulfil legal duties. Indeed limitations imposed on members had not differed fundamentally from similar limitations on adherents' private lives imposed by other religions. In any event, encouragement to abstain from blood transfusions even in life-threatening situations could not warrant the refusal to reregister the association and its subsequent dissolution since domestic law granted patients the freedom of choice of medical treatment); *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, §§84, 115 (removing the applicants' churcers status altogether rather than applying less stringents messures in establishing a politically tainted re-registration procedure whose justification was open to doubt, and treating some churches differently from others who were automatically considered incorporated and thus entitled to continue enjoying certain advantages from the State, was considered neglecting the State's duty of neutrality).
[295] *Manoussakis v. Greece*, judgment of 26 September 1996, §§47, 50-51; *Vergos v. Greece*, judgment of 24 June 2004, §34; Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, II.F (1).
[296] Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, §27.
[297] *Supreme Holy Council of the Muslim Community v. Bulgaria*, §33.
[298] *Hasan and Chaush v. Bulgaria*, §78.
[299] *Metropolitan Church of Bessarabia and Others v. Moldova*, §129.
[300] In *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, the Court found a violation of Article 9 on account, among other things, of a ten-year waiting period imposed on "*new*" religious communities that already had legal personality before they could acquire the status of a "*religious society*" (*Religionsgesellschaft*) offering a number of substantive privileges. The Court held that it:

> 98. [...]could accept that such a period might be necessary in exceptional circumstances such as would be in the case of newly established and unknown religious groups. But it hardly appears justified in respect of religious groups with a long-standing existence internationally which are also long established in the country and therefore familiar to the competent authorities, as is the case with the Jehovah's Witnesses. In respect of such a religious group, the authorities should be able to verify whether it fulfils the requirements of the relevant legislation within a considerably shorter period. Further, the example of another religious community cited by the applicants shows that the Austrian State did not consider the application on an equal basis of such a waiting period to be an essential instrument for pursuing its policy in that field.

and places of worship, regardless of the number of believers and without any undue administrative burden.[301]

[163.] The conclusion of special agreements between the State and certain religious communities establishing a special regime in favour of the latter communities does not in itself contravene Articles 9 and 14 of the Convention, provided that there is an objective and reasonable justification for the difference in treatment and that similar agreements may be entered into by other religious communities wishing to do so.[302] A difference in treatment between religious communities which results in granting a specific status in law – to which substantial privileges are attached, while refusing this preferential treatment to other religious or belief communities which have not acceded to this status – is compatible with the requirement of non-discrimination on the grounds of religion or belief as long as the State sets up a framework for conferring legal personality on religious groups to which a specific status is linked. All religious communities that wish to do so should have a fair opportunity to apply for this status and the criteria established should be applied in a non-discriminatory manner.[303]

[164.] The fact that a religion is recognised as a state religion or that it is established as an official or traditional religion or that its followers comprise the majority of the population may be acceptable, provided however that this shall not result in any impairment of the enjoyment of any human rights and fundamental freedoms, and also not in any discrimination against adherents to other religions or non-believers.[304]

iii. Assessment of religious movements (sects)

[165.] The requirement of state neutrality does not preclude the authorities from assessing whether the activities of religious bodies or associations may be considered to cause harm or a threat to public order or safety.[305] Indeed, in particular cases, public authorities may be under a positive obligation to take action against associations considered harmful to the population.[306] In *Leela Forderkreis e.V. and Others v. Germany* adherents of the "Osho movement" alleged that the classification of their religious organisation as a "youth sect", "youth religion", "sect" and "psycho-sect" had denigrated their faith and had infringed the State's duty of neutrality in religious matters. While the Court was prepared to proceed upon the assumption that such labelling had involved an "interference" with Article 9 rights as "the terms used to describe the applicant associations' movement may have had negative consequences for them", it nevertheless held that no violation of the guarantee had taken place:

> 100. An examination of the Government's activity in dispute establishes further that it in no way amounted to a prohibition of the applicant associations' freedom to manifest their religion or belief. The Court further observes that the Federal Constitutional Court, […] carefully analysed the impugned statements and prohibited the use of the adjectives "destructive" and "pseudo-religious" and the allegation that members of the movement were manipulated as infringing the principle of religious neutrality. The remaining terms, notably the naming of the applicant associations' groups as "sects" , "youth sects" or "psycho-sects", even if they had a pejorative note, were used at the material time quite indiscriminately for any kind of non-mainstream religion. The Court further notes that the Government undisputedly refrained from further using the term "sect" in their information campaign following the recommendation contained in the expert report on "so-called sects and psychocults" […] Under these circumstances, the Court considers that the Government's statements […] at least at the time they were made, did not entail overstepping the bounds of what a democratic State may regard as the public interest.

[301] PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §6.8.
[302] *Savez crkava "Riječ života" and Others v. Croatia*, judgment of 9 December 2010, §§85-86, 88 (Government's refusal to conclude an agreement which would allow the applicant churches to perform certain religious services and obtain official state recognition of the religious weddings celebrated by their clergymen already available for other churches); *Koppi v. Austria*, judgment of 10 December 2009, §33.
[303] *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria,* §92.
[304] CDL-AD(20014)023, Joint Guidelines on the Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission, §41.
[305] *Manoussakis and Others v. Greece*, §40; *Leela Forderkreis e.V. and Others v. Germany*, judgment of 6 November 2008, §93.
[306] *Leela Forderkreis e.V. and Others v. Germany*, judgment of 1 March 2010, §99.

[166.] In connection with the official recognition of religious communities, the question of the definition of "religion" may arise. The Court has not found it necessary to give a definite interpretation but considers that it must rely on the position of the domestic authorities in the matter to determine the applicability of Article 9 of the Convention accordingly.[307] In the case of *Kimlya and Others v. Russia*[308], a Scientology Centre initially registered as a non-religious entity had been dissolved specifically on account of the religious nature of its activities. The use of this ground for the suppression of the centre was sufficient to allow the Court to deem that Article 9 was engaged.[309]

[167.] Although the Convention institutions do not have competence to define religion, religious beliefs must be interpreted non-restrictively and cannot be limited to the "*main"* religions. The issue is more delicate regarding minority religions and new religious groups that are sometimes referred to as "*sects*" at national level.[310] According to the Court's current case-law, all religious groups and their members enjoy equal protection under the Convention.[311] The issue of new religious movements was brought before the Court in the case of *Fédération chrétienne des témoins de Jéhovah de France v. France*[312]. The Court observed that the French legislation in question aimed at strengthening preventive and punitive action against sectarian movements infringing human rights and fundamental freedoms. The Court specified that it was not its task to rule on legislation *in abstracto* and that it could not therefore express a view as to the compatibility of the provisions of the French legislation with the Convention. The Court noted however that:

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

[168.] The Venice Commission noted in its Joint Guidelines on the Legal Personality of Religious or Belief Communities that the terms "religion" and "belief" are to be broadly construed. A starting point for defining the application of freedom of religion or belief must be the self-definition in the field of religion or belief, though of course the authorities have a certain competence to apply some objective, formal criteria to determine if indeed these terms are applicable to the specific case. The freedom of religion or belief is therefore not limited in its application to traditional religions and beliefs or to religions and beliefs with institutional characteristics or practices analogous to those traditional views.[313]

---

[307] *Kimlya and Others v. Russia* , judgment of 1 October 2009, §79.

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

[309] *Kimlya and Others v. Russia*, §§80-81.

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

[311] "Main" belief systems fall within the scope of the protection, e.g *ISKCON and 8 Others v. the United Kingdom*, decision of 8 March 1994. Minority variants of "main" belief systems are also covered, e.g. *Cha'are Shalom Ve Tsedek v. France* [GC], judgment of 27 June 2000. Older faiths such as Druidism also qualify as religion, *Chappell v. the United Kingdom*, decision of 14 July 1987. Religious movements of more recent origin such as Jehovah's Witnesses are also covered, *Kokkinakis v. Greece*, judgment of 25 May 1993; *Manoussakis and Others v. Greece*, judgment of 26 September 1996, §40; The same is the case for the Moon Sect, *X v. Austria*, decision of 15 October 1981, as well as the Divine Light Zentrum, *Omkarananda and the Divine Light Zentrum v. Switzerland*, decision19 March 1981. However, whether the Wicca movement involves a "religion" appears to have been left open, and thus where there is a doubt as regards this matter, an applicant may be expected to establish that a particular "religion" indeed does exist, *X v. the United Kingdom*, decision of 4 October 1977.

[312] Decision of 6 November 2001.

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

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

[169.] As essential for exercising the right to manifest one's religion the Court has consistently referred to such fundamental aspects of religious practice as the right to establish places of worship and the rights to own or rent property.[314]. Any interference with such rights is in principle liable to give rise to questions falling within the scope of Article 1 of Protocol No. 1, which guarantees the protection of property.[315] However deprivation of a religious organisation's material resources will only give rise to Article 9 consideration insofar as they are intended for the celebration of divine worship.[316] In *Canea Catholic Church v. Greece* a decision of the domestic courts to refuse to recognise the applicant church as having the necessary legal personality was successfully challenged, the Court considering that the effect of such a decision was to prevent the church now and in the future from having any dispute relating to property determined by the domestic courts.[317]

[170.] Article 9 should also be read in the light of Article 6 and the guarantees of access to fair judicial proceedings to protect the religious community, its members and its assets.[318] There must thus be a right of access to court in terms of Article 6 of the Convention for the determination of a religious community's civil rights and obligations, in particular property rights.[319]

[171.] State regulation may also involve measures such as the imposition of restrictions to places of worship considered of significance[320]. Again, care is needed to ensure that the legitimate considerations which underpin the rationale for such measures are not used for ulterior purposes to favour or to hinder a particular faith.[321] National authorities have the right to take measures designed to determine whether activities undertaken by a religious association are potentially harmful to others, but this does not allow the State to determine the legitimacy of either the beliefs or the means of expressing such beliefs.[322] Authorisation requirements under the law are consistent with Article 9 of the Convention only in so far as they are intended to verify whether the formal conditions laid down in those enactments are satisfied.[323]

[172.] Planning controls provide another example of measures required in the public interest but which may nevertheless have an undue impact on freedom of religion and belief. Situations in which rigorous (or indeed prohibitive) conditions are imposed on the adherents of particular faiths, however, must be contrasted with those in which an applicant is seeking to modify the outcome of planning decisions taken in an objective and neutral manner. For instance, having regard to a State's margin of appreciation in matters of town and country planning, the public interest should not be made to yield precedence to the need to worship of a single adherent of a religious community when there was a prayer house in a neighbouring town which met the religious community's needs in the region.[324]

[173.] The Venice Commission has noted with regard to land-use and zoning that laws relating to building, remodelling, or use of properties for religious purposes are likely to involve complicated

---

[314] *Jehova's Witnesses of Moscow and Others v. Russia*, judgment of 10 June 2010, §102; *Kimlya and Others v. Russia*, §85; *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §40.
[315] *Holy Monasteries v. Greece*, judgment of 9 December 1994, §§54-66.
[316] *Ibid*., §§86-87.
[317] *Canea Catholic Church v. Greece*, judgment of 16 December 1997, §§40-42.
[318] *Metropolitan Church of Bessarabia and Others v. Moldova*, §105.
[319] *Ibid*., § 141; *Canea Catholic Church v. Greece*, §42.
[320] E.g. *Chappell v. the United Kingdom*, decision of 14 July 1987, Cf. *Logan v. the United Kingdom*, decision of 6 September 1996.
[321] *Cyprus v. Turkey* [GC], judgment of 10 May 2001, §§241-247 (restrictions on movement including access to places of worship curtailed ability to observe religious beliefs).
[322] *Manoussakis and Others v. Greece*, §40. Domestic law had required religious organisations to obtain formal approval for the use of premises for worship. Jehovah's Witnesses had sought unsuccessfully to obtain such permission, and thereafter had been convicted of operating an unauthorised place of worship.
[323] *Ibid*., §47. See also *Khristiansko Sdruzhenie "Svideteli na Iehova" (Christian Association Jehovah's Witnesses) v. Bulgaria*, decision of 3 July 1997 and friendly settlement 9 March 1998 (suspension of the association's registration followed by arrests, dispersal of meetings held in public and private locations and confiscation of religious materials); *Institute of French Priests and Others v. Turkey*, friendly settlement of 14 December 2000 (decision by the Turkish courts to register a plot of land belonging to the Institute in the name of state bodies on the ground that the Institute was no longer eligible for treatment as a religious body as it had let part of its property for various sporting activities; friendly settlement secured after a life tenancy in favour of the priests representing the Institute was conferred).
[324] *Vergos v. Greece*, §§36-43.

state laws relating to land, property, and historical preservation. It is not uncommon for state officials (at the national, federal, or local level) to use such laws to restrict religious communities from operating religious facilities. The justifications for restrictions may appear to be neutral (such as regulating the flow of traffic, harmony with other buildings or activities, or noise restrictions), but are selectively enforced for discriminatory purposes against disfavoured religious groups. It is important that such laws both be drafted neutrally and applied neutrally and with a legitimate purpose.[325]

[174.] Concerning cemeteries the Venice Commission has noted that States have a variety of practices involving the relationship between religion and cemeteries. In some cases the State exercises complete control over the subject, and in others a great deal of responsibility is held by religious institutions. Although there are no clear rules governing the subject, the State should avoid discrimination among religious groups and permit, within reasonable grounds (particularly public health), the right to manifest religion and belief in this phase of the human condition.[326]

[175.] ECRI has, for instance, recommended the authorities of several State Parties to grant permission or remove administrative or other obstacles for Muslim communities to build a sufficient number of mosques in order for them to exercise their right to manifest their religion in worship[327] and to ensure that Muslim communities have cemeteries.[328]

[176.] The Advisory Committee of the Framework Convention of National Minorities has, for instance, invited the authorities of a State Party to take further steps to ensure that persons belonging to minorities and practising Islam have adequate access to places of worship, especially in places where they live in substantial numbers, and to take decisions on the building or allocation of new places of worship in close and timely consultation with the representatives of the groups concerned.[329] It also invited the authorities to ensure that the process of restitution of properties to religious communities is carried out in a non-discriminatory manner and to grant fair and equitable compensation.[330]

[177.] As regards disputes over religious property, the Venice Commission has indicated that there are two classic religious-property disputes. The first is where the ownership of religious property is disputed as a result of a prior state action that seized the property and transferred it to another group or to individuals. This has been particularly problematic in many cases in formerly communist countries. The second case is where a dispute within a religious community leads to one or more groups contesting ownership rights. Both types of disputes, as well as other related issues, often involve historical and theological questions. Such disputes can be very complicated and demand expertise not only on strictly legal issues involving property, but also on technical questions of fact and doctrine. To the extent that laws deal with such issues, it is important that they be drafted and applied as neutrally as possible and without giving undue preferential treatment to favoured groups.[331]

v. Financing and taxation

[325] CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, III.
[326] *Ibid*.
[327] ECRI Report on the Russian Federation in the fourth monitoring cycle, adopted on 20 June 2013, §§130-131; ECRI Report on Andorra, in the fourth monitoring cycle adopted on 21 March 2012, §99; ECRI Report on Denmark in the fourth monitoring cycle, adopted on 23 March 2012, §94; ECRI Report on Iceland in the fourth monitoring cycle, adopted on 6 December 2011, §108 ; ECRI Report on Luxembourg in the fourth monitoring cycle, adopted on 8 December 2011, §93; ECRI Report on Ukraine in the fourth monitoring cycle, adopted on 8 December 2011, §99; ECRI Report on Greece in the fourth monitoring cycle, adopted on 2 April 2009, §110; ECRI Report on Belgium, in the fifth monitoring cycle, adopted on 4 December 2013, §114.
[328] ECRI Report on Denmark in the fourth monitoring cycle, adopted on 23 March 2012, §94; ECRI Report on Luxembourg in the fourth monitoring cycle, adopted on 8 December 2011, §93.
[329] Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §153; Third Opinion of the Advisory Committee on Spain, adopted on 22 March 2012, §§75-76.
[330] Third Opinion of the Advisory Committee on the Russian Federation, adopted on 24 November 2011, §154. Third Opinion of the Advisory Committee on Ukraine, adopted on 22 March 2012, §64, see also Committee of Ministers' Resolution CM/ResCMN(2013)8 on the implementation of the Framework Convention on National Minorities in Ukraine, adopted on 18 December 2013; Third Opinion of the Advisory Committee on Albania, adopted on 23 November 2011, §118; Third Opinion of the Advisory Committee on Romania, adopted on 21 March 2012, §17.
[331] CDL-AD(2004)028 Venice Commission and OSCE/ODIHR Guidelines for Review of Legislation Pertaining to Religion or Belief, III.D.

[178.] The State should not take measures which impede the normal functioning of a religious community. Accordingly, an exorbitant tax assessment which seriously disrupts the internal organisation and functioning of the association of a community, preventing it from carrying on its religious activity as such, amounts to an interference with the rights under Article 9 of the Convention and may constitute a violation if the Court finds it disproportionate.[332]

[179.] Regarding the sources of financing of religious and belief organisations, the Venice Commission has listed the following possible arrangements and the corresponding principles[333]:

> *The permissibility of accepting gifts and the ability to solicit funds.* There is a variety of state practices with regard to permission to accept gifts and solicit funds. Some States give wide latitude for raising funds while others carefully limit amounts that can be received and how funds can be raised. The principal international guidelines would suggest that although the State may provide some limitations, the preferable approach is to allow associations to raise funds provided that they do not violate other important public policies. The laws should be established in a non-discriminatory manner.
>
> *State financing*. Many States provide both direct and indirect financing for religious and belief organisations. In addition to the indirect (but very real) benefits that come from tax exemptions and tax deductions, a variety of funding systems operate, including: paying salaries (or providing social benefits) for clergy; subsidizing religious schools; allowing organisations to use publicly owned buildings for meetings; and donating property to religious organisations. In many cases, State-financing schemes are directly tied to historical events, (such as returning property previously seized unilaterally by the State), and any evaluations must be very sensitive to these complicated fact issues.
>
> *Tax exemption.* It is very common, though not universal, for the State to provide tax benefits to non-profit associations. The benefits typically are of two types: first, direct benefits such as exemption from income and property taxes, and second, indirect benefits that allow contributors to receive a reduction in taxes for the contribution. There is little international law regarding these issues, though non-discrimination norms apply.
>
> *Tax system for raising funds*. Some States allow religions to raise funds through the State tax system. For example, a (religious) public law corporation may have an agreement with the State whereby the latter taxes members of the religion and then transfers the proceeds to the religion. The two difficulties that frequently arise in such systems are first, whether such arrangements are discriminatory among religion and belief groups, and second, whether individuals who do not wish to have taxes taken from them for the religion to which they belong may opt-out. While international law does not prohibit such taxing systems per se, individuals presumably should be able to opt-out of the taxing system (though the opt-out might entail loss of membership in the religion).

[180.] On the other hand, domestic law may not impose an obligation to support a church or a religious organisation by means of taxation without recognising the right of the individual to leave the church and thus obtain an exception from the requirement. Article 9 confers protection from compulsion of the individual to become indirectly involved in religious activities against his or her own will in respect of a requirement to pay a church tax. States must respect the religious convictions of those who do not belong to any church, and thus must make it possible for such individuals to be exempted from the obligation to make contributions to the church for its religious activities.[334] However, this principle does not extend to general legal obligations falling exclusively in the public sphere, and thus taxpayers may not demand that their payments are not allocated to particular purposes.[335]

---

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

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

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

[335] Regarding the question of the non-discrimination between religious communities – see also *Ásatrúarfélagið v. Iceland*, inadmissibility decision of 18 September 2012. The Court saw no cause for calling into question the Icelandic courts' view that, since the National Church's

[181.] The Advisory Committee of the Framework Convention of National Minorities has urged the authorities of a State Party to continue ensuring that the system of funding the National Church does not interfere with the freedom of conscience and religion of persons who do not belong to this church.[336]

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

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

[182.] Article 2 protecting the right to life and Article 3 prohibiting torture or inhuman or degrading treatment or punishment are regarded by the Court as provisions of fundamental importance in the Convention. States are thus under an obligation to protect individuals from attacks or from ill-treatment on account of their thought, conscience and religion.[337] In such cases States will need to show that their national authorities have carried out effective investigations into the incidents in question capable of meeting the requirements of the rights enshrined in these articles.[338]

[183.] The Court has pointed out that, as in cases of racially motivated ill-treatment, when investigating violent attacks the state authorities have the additional duty to take all reasonable steps to unmask any religious motives and to establish whether or not religious hatred or prejudice might have played a role in the events, even when the ill-treatment is inflicted by private individuals. Treating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights.[339] The Court has further held that the refusal of the police to intervene promptly to protect the victims of religious-motivated violence and the subsequent indifference on the part of the relevant authorities, who refused to apply the law in these cases, amounted to a violation of Articles 3 and 9 in conjunction with Article 14.[340]

[184.] The Court has accepted that compulsory military service for conscientious objectors in some cases may amount to degrading treatment within the meaning of Article 3.[341] The expulsion of an alien by a Contracting State may also give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.[342] This is also the case when a person is in risk of religious persecutions in a third country.[343]

ii. Protection of persons belonging to minority religious groups

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

---

tasks and obligations to society could not be compared to those of the applicant association's, the allocation of additional funding to the former did not constitute discrimination.

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

[337] *Pretty v. the United Kingdom*, judgment of 29 April 202, §49; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, judgment of 3 May 2007, §95; *Milanović v. Serbia*, judgment of 14 December 2010, §82.

[338] *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, §97; *Milanović v. Serbia*, §§75, 89.

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

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

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

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

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

[186.] Whereas the freedom of thought and conscience as well as the freedom to choose a religion or belief are strictly personal freedoms, the right to freedom of religion has not only an individual but also a collective dimension, where the right of the collective body to manifest and practice religion is protected. The collective right to assemble, to practice or manifest religion or beliefs is furthermore protected under Article 11 of the European Convention on Human Rights[344]. The Convention does not however contain a specific provision for the protection of minority rights as such. Nevertheless, Article 14 of the Convention and Article 1 of Protocol No. 12[345] provide protection against discrimination of persons belonging to religious minorities by explicitly mentioning "religion" and "association with a national minority" as non-admissible grounds for discrimination.[346] The Court has, however, produced very limited results under the prohibition of discrimination as concerns the state obligation to take special measures on behalf of minorities to compensate their vulnerable and disadvantaged position.[347]

[187.] Since the 1950s the Parliamentary Assembly of the Council of Europe has considered the issue of protecting the rights of groups and individuals belonging to national minorities[348] , including those defined by religion or belief. For instance, in its Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", the Parliamentary Assembly called upon member States to ensure that the religious beliefs and traditions of individuals and communities of society are respected, while guaranteeing that a due balance is struck with the rights of others in accordance with the case law of the European Court of Human Rights. It also urged member States to ensure the effective protection of communities and individuals defined by religion or beliefs and of their meeting places and places of worship, including those of minorities Member States should also promote correct and objective education about religions and non-religious beliefs, including those of minorities; actively support initiatives aimed at promoting the interreligious and intercultural dimension of dialogue, and should ensure the effective protection of communities and individuals defined by religion or beliefs and of their meeting places and places of worship, including those of minorities..[349]

[188.] The Preamble of the Framework Convention for the Protection of National Minorities[350] specifically acknowledges "that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity"[351]. On the basis of a free choice of whether or not to be treated as a person belonging to a national minority, Article 3 of the Framework Convention provides protection to such persons, who may exercise their rights individually and in community with others.[352] In addition to guaranteeing the fundamental principles of non-discrimination and equality, Article 4 provides:

> **The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons**

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

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

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

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

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

[349] PACE Resolution on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", §§9.8 and 11.3 – 11.5.

[350] See also above 1.i and ii.

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

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

belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

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

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

[190.] Although the Framework Convention does not provide a definition of "national minorities" and thus does not specify the group of persons entitled to the protection, Article 5 mentions nevertheless that persons belonging to national minorities can maintain and develop their culture and preserve their identity, including their religion. Respect for the right to freedom of peaceful assembly, freedom of association, freedom of thought, conscience and religion is guaranteed in Article 7[353], and Article 8 further specifies:

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

[191.] With regard to the scope of application of the Framework Convention, the Advisory Committee has, for instance, urged the authorities of a State Party to engage in a dialogue with persons belonging to groups interested in the protection offered by the Framework Convention[354] and has invited the Government to give due consideration to the claims for recognition under the Framework Convention raised by the representatives of the Muslim community, and possible other groups.[355]

[192.] The Council of Europe Commissioner for Human Rights has pointed out that Muslims have become the primary "other" in right-wing populist discourse in Europe. He advised Governments to stop targeting Muslims through legislation or policy, and instead enshrine the ground of religion or belief as a prohibited ground of discrimination in all realms. They should also empower independent equality bodies or ombudsmen to review complaints, provide legal assistance and representation in court, provide policy advice, and conduct research on discrimination against Muslims and other religious groups. Monitoring discrimination against Muslims should involve collecting data disaggregated by ethnicity, religion and gender.[356]

[193.] The European Commission against Racism and Intolerance (ECRI)[357] has expressed particular concern about the signs of increasing religious intolerance towards Islam and Muslim communities in countries where this religion is not observed by the majority of the population.[358] In its General Policy Recommendation No. 5 it calls upon the Governments in member States, where Muslim communities are settled and live in a minority situation, to ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion.[359] Likewise, the ECRI has observed an increase of antisemitism in many European countries and stressed that this increase is also characterised by new manifestations of antisemitism which continues to be promoted, openly or in a coded manner, by some political parties and leaders, including not only extremist parties, but also certain mainstream parties. In its General Policy Recommendation No. 9, ECRI urges the Government of member States to give a high priority to the fight against antisemitism, taking all necessary measures to combat all of its manifestations, regardless of their origin.[360] In its fourth-cycle reports it has also identified instances of discrimination or intolerance against members of Christian groups in member States, expressing its concerns at the lack of mechanisms to prevent various negative trends (physical assaults, negative publicity in the media, vandalism, attacks on property,

[353] These fundamental freedoms correspond to Articles 9, 10 and 11 of the European Convention of Human Rights which are of particular relevance for the protection of national minorities.
[354] Third Opinion of the Advisory Committee on Bulgaria, adopted on 11 February 2014, §30.
[355] Third Opinion of the Advisory Committee on the United Kingdom, adopted on 30 June 2011, §§35-36.
[356] Human Rights Comment by Nils Muižnieks "Anti-Muslim prejudice hinders", published on 24 July 2012.
[357] See also 1.ii.
[358] See for example the statement by ECRI on the ban of the construction of minarets in Switzerland from 1 December 2009.
[359] ECRI General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims, adopted on 16 March 2000.
[360] ECRI General Policy Recommendation No. 9 on the fight against anti-Semitism, adopted on 25 June 2004.

damage to religious buildings) as well as States' continued lack of compliance with its specific recommendations (legal registration, property rights, issuance of visas for priests or other clerics)[361].

[194.] The Venice Commission has also pointed out that in a country where there is a marked link between ethnicity and a particular church there is a distinct opportunity for discrimination against other religions. To guard against this possibility there is a particular need to protect pluralism in religion which is an important element of democracy.[362] Certain measures discriminating against the other religions, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection. Thus, such status must not be allowed to repress, discriminate against, or foster hostility toward other religions in maintaining this identity.[363]

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

Hate speech

[195.] Recommendation No. R 97(20) of the Committee of Ministers to member States on "Hate Speech" [364] indicates that the term should be understood as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"[365]. It thus also covers incitement to hatred on grounds of religion and intolerance.

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

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

[197.] In the Appendix to the Recommendation, it is stated that the national authorities and officials "have a special responsibility to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur."[366]

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

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

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

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

364 Adopted on 30 October 1997.

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

366 Principle 1 of the Appendix.

as part of their mission to communicate information and ideas on matters of public interest on the other hand."[367]

[199.] Specifically with regard to the dissemination of racist and xenophobic propaganda through computer systems, the Additional Protocol to the Convention on Cybercrime[368] defines, in Article 2, racist and xenophobic material as "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".

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

- **distributing, or otherwise making available, racist and xenophobic material to the public through a computer system (Article 3)**
- **threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics (Article 4)**
- **insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics (Article 5)**
- **distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party (Article 6)**
- **aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed (Article 7).**

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

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

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

> **The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the**

[367] Principle 6 of the Appendix.

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

reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

[203.] Although the case-law of the European Court of Human Rights enshrines the overriding and essential nature of the freedom of expression in a democratic society - a freedom applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb[369] - it has also laid down the limits to that freedom.[370] Paragraph 2 of Article 10 expressly recognises that the exercise of that freedom carries with it duties and responsibilities. Amongst them, in the context of religious beliefs, is the general requirement to respect the peaceful enjoyment of the rights guaranteed under Article 9 to the holders of such beliefs, including a duty to avoid as far as possible an expression that is, in regard to for instance objects of veneration, gratuitously offensive to others and profane.[371] The issue before the Court often involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely the right impart to the public controversial views and, by implication, the right of interested persons to take cognisance of such views, on the one hand, and the right of other persons to proper respect for their freedom of thought, conscience and religion, on the other hand[372] (see also above under 2.v.).

[204.] As a matter of principle, the Court has considered that it may be necessary in certain democratic societies to sanction or even prevent improper attacks on objects of religious veneration[373] or all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance), provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.[374]

[205.] Thus, there can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention.[375] It is obvious that hate speech which implies glorification of violence will not be protected.[376]

[206.] The Court has reiterates that remarks which constitute a general, vehement attack on a religious or ethnic group are incompatible with the values of tolerance, social peace and non-discrimination which underlie the Convention and do not fall within the right to freedom of expression that it protects.[377] Therefore, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.[378] Moreover, as in the field of morals, and perhaps to an even greater degree, there is no uniform European conception of the requirements of "the protection of the rights of others" in relation to attacks on their religious convictions.[379] However,

[369] *Handyside v. the United Kingdom*, 7 December 1976, §49; *Lingens v. Austria*, judgment of 8 July 1986, §41.
[370] See for example *Garaudy v. France*, decision of 24 June 2003; *Pavel Ivanov v. Russia*, decision of 20 February 2007.
[371] *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §§46-47, 49.
[372] *Otto-Preminger-Institut v. Austria*, §§55-56.
[373] *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, §49.
[374] See for example *Gündüz v. Turkey*, judgment of 4 December 2003, §40; *Erbakan v. Turkey*, judgment of 6 July 2006, §56; *Féret v. Belgium*, judgment of 16 July 2009, §63.
[375] See for example *Jersild v. Denmark*, judgment of 23 September 1994, §35; *Gündüz v. Turkey*, §41.
[376] See for example *Sürek v. Turkey (No. 1)* [GC], judgment of 8 July 1999, §62. *Ergin v. Turkey (No. 6)*, judgment of 4 May 2006, §34.
[377] See among others *Norwood v. the United Kingdom*, decision of 16 November 2004; *Pavel Ivanov v. Russia*, decision of 20 February 2007; *S.A.S. v. France* [GC], judgment of 1 July 2014, §149.
[378] See also above 2.vi.
[379] *Otto-Preminger-Institut v. Austria*, §50; *Murphy v. Ireland*, judgment 10 July 2003, §81; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, §58. The Court noted that "what is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place, especially in an era characterised by an ever-growing array of faiths and denominations".

when deciding on whether a restriction is reconcilable with freedom of expression, the Court will look at the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made[380], but also the form in which they were conveyed[381], and the particular medium of expression used.[382] The Court has emphasised the importance of freedom of the press and debate on matters of public interest[383] and has recalled that there is little scope for restrictions on political speech.[384] Furthermore, the limits of permissible criticism are wider with regard to the Government than in relation to a private citizen or even a politician. However, where such remarks incite to violence against an individual or a public official or a sector of the population, the State authorities enjoy a wider margin of appreciation.[385] Finally, lack of consistency in the attitude of the State seems to be sufficient for the Court to rule in favour of the applicant.[386]

[207.] On an exceptional basis and in extreme cases, the Court has held that speech which is incompatible with the Convention's underlying values should be removed from the protection of Article 10 by virtue of Article 17 of the Convention.[387] There is no doubt that the justification of a pro-Nazi policy cannot be allowed to enjoy the protection afforded under Article 10. The Court found that there is a category of clearly established historical facts – such as the Holocaust – whose negation or revision will be removed from the protection of Article 10 by Article 17. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them.[388]

[208.] In its Commentary relating to the language rights of persons belonging to national minorities under the Framework Convention, the Advisory Committee has reiterated that criminal legislation should include provisions that expressly provide for discriminatory motivations based on language, culture, ethnicity or religion to be taken into account by courts as an aggravating circumstance for all offences. Hate speech and incitement to any form of hostility based on ethnic, cultural, linguistic or religious identity must be included in criminal law provisions to ensure adequate sanctioning for such offences.[389]

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

---

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

[381] *Lehideux and Isorni v. France*, §52.

[382] *Murphy v. Ireland*, judgment 10 July 2003, §72.

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

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

[385] *Sürek v. Turkey*, §61.

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

[387] *Pavel Ivanov v. Russia*, decision of 20 February 2007.

[388] *Lehideux and Isorni*, §§53, 47. See also *Garaudy v. France*; *Féret v. Belgium*, §§69, 71 (leaflets and posters with the following statements: "Attacks in the USA: the couscous clan", "oppose the Islamization of Belgium", "stop the policy of pseudo-integration", "return the unemployed non-European"). Additionally, some of the leaflets advocated for "the formation of ethnic ghettos". The Court ruled that this form of discourse inevitably generates among the public hatred *vis-à-vis* foreigners.

[389] Commentary relating to the language rights of persons belonging to national minorities under the Framework Convention, adopted on 24 May 2012, §29.

[210.] In addition, in its GPR No. 7 on "National Legislation to Combat Racism and Racial Discrimination"[390] ECRI calls upon member States to adopt criminal law provisions combating various racist expressions. Such expressions concern intentional public incitement to violence, hatred or discrimination against a person or a grouping of persons on the ground, *inter alia*, of their religion; intentional public insults and defamation against such a person or grouping; intentional threats against the same target; the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the ground, *inter alia*, of their religion; and the public denial, trivialization, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes.[391] Finally, public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim of material containing racist expression such as the above, should also be the object of criminal sanctions.[392] In addition to recommending building capacity (in general, or dedicated capacity in particular),[393] ECRI has urged countries to think about innovative ways of enlisting the help of Internet users.[394]

[211.] The Parliamentary Assembly has adopted several recommendations and resolutions on the freedom of expression and respect for religious beliefs and protection of religious communities.[395] More specifically, in its Recommendation 1805 (2007) on "Blasphemy, religious insults and hate speech against persons on grounds of their religion", the Assembly reaffirmed the need to penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on religious grounds or otherwise. The Assembly considered that national law and practice should - as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention – penalise expressions about religious matters which intentionally and severely disturb public order and call for a person or a group of persons to be subjected to hatred, discrimination or violence. However, with regard to blasphemy, as an insult to a religion, it considered that it should not be deemed a criminal offence.[396]

[212.] Upon the proposal of the Parliamentary Assembly[397], the Venice Commission prepared a report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred. The Venice Commission expressed the view that "in a true democracy imposing limitations on freedom of expression should not be used as a means of preserving society from dissenting views, even if they are extreme. Ensuring and protecting open public debate should be the primary means of protecting inalienable fundamental values such freedom of expression and religion at the same time as protecting society and individuals against discrimination. It is only the publication or utterance of those ideas which are fundamentally incompatible with a democratic regime because they incite to hatred that should be prohibited".[398] The report concludes [399]:

> a) That incitement to hatred, including religious hatred, should be the object of criminal sanctions […]
>
> b) That it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component.

[390] Adopted by ECRI on 13 December 2002.
[391] §18 a) - e).
[392] §18 f).
[393] See 4th-round reports on Latvia, §90; Lithuania, §§30 and 83; the Netherlands, §25; and Poland, §103.
[394] GPR No. 6; see also 4th-round reports on France, §81 and Lithuania, §§29 and 82.
[395] For example Resolution 1510 (2006) on "Freedom of expression and respect for religious beliefs", adopted on 28 June 2006 and Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", adopted on 24 April 2013.
[396] PACE Recommendation 1805 (2007) on "Blasphemy, religious insults and hate speech against persons on grounds of their religion", §§4 and 17.2.
[397] Resolution 1510 (2006) on "Freedom of expression and respect for religious beliefs", adopted by the Parliamentary Assembly on 28 June 2006, §18.
[398] CDL-AD(2008)026, Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, adopted by the Venice Commission at its 76th Plenary session (Venice, 17-18 October 2008), §46.
[399] *Ibid*., §89.

c) That the offence of blasphemy should be abolished (which is already the case in most European States) and should not be reintroduced.

As concerns the question of to what extent criminal legislation is adequate and/or effective for the purpose of bringing about the appropriate balance between the right to freedom of expression and the right to respect for one's beliefs, the Venice Commission reiterated that, in its view, criminal sanctions are only appropriate in respect of incitement to hatred (unless public order offences are appropriate).[400] Notwithstanding the difficulties with enforcement of criminal legislation in this area, there is a high symbolic value in the pan-European introduction of criminal sanctions against incitement to hatred. It is essential however that the application of legislation against incitement to hatred be done in a non-discriminatory manner.[401]

Hate crime

[213.] The Council of Europe Commissioner for Human Rights has underlined that unfortunately the move from hate speech to hate crime is easily made[402]. As measures to prevent and react to cases of hate crime he proposed that:

- governments should establish co-operative relations with minority communities and invite proposals on measures to be taken place;
- anti-discrimination bodies should be established with a broad mandate and the authority to address hate violence through monitoring, reporting and assistance to victims;
- steps should be taken to monitor and collect data on bias-motivated crimes and the circumstances giving rise to them;
- access to complaints procedures needs to be improved for individual victims and for groups acting on their behalf;
- the judicial response to hate crime must be severe;
- existing hate-crime laws must be enforced in order to increase their deterrent effect. The procedures should be well documented and made public.

[214.] The Commissioner for Human Rights further stated that the political presence of racist extremist political parties in national parliaments and governments lends legitimacy and credibility to political extremism that is often linked to racist and other hate crimes.[403] He has furthermore stated with regard to anti-Semitism that national political leaders should vigorously condemn antisemitic speech and attacks when they occur, sending a clear signal that such hatred is unacceptable and will be resolutely punished. Finally, he said that in light of new technological developments, States should address the growing concerns posed by online antisemitism and check that they have effectively implemented the Committee of Ministers' Recommendation No. R (97) 20 on "hate speech".[404]

[215.] In reaction to an increase in acts of vandalism and desecration in many Council of Europe member States, in 2010 the Council of Europe Commissioner for Human Rights qualified these acts as hate crimes and pointed out that they were "urgent human rights issues".[405]

[216.] The European Commission against Racism and Intolerance (ECRI) also reported attacks on individuals motivated on religious grounds[406] as well as against religious sites and property[407]. ECRI expressed concern at incidents, in which individual were targeted and subjected to violent racist attacks because they belong to minority groups well as at reports that in some cases attacks against religious sites and property tended to be minimised by the authorities and stressed the need to address

[400] *Ibid*., §90.
[401] *Ibid.*, §91.
[402] Council of Europe Commissioner for Human Rights, Thomas Hammarberg's viewpoint on "Hate crime".
[403] Human Rights comment by Commissioner Nils Muižnieks, "Europe must combat racist extremism and uphold human rights" posted on 13 May 2013.
[404] Human Rights Comment by Commissioner Nils Muižnieks "Europe still haunted by antisemitism" posted on 23 January 2014.
[405] Thomas Hammarberg, "Desecrations of cemeteries are hate crimes that exacerbate intolerance", 30 November 2010.
[406] For example, ECRI report on Turkey in the fourth monitoring cycle, adopted on 10 December 2010, §§137-138.
[407] For exemple ECRI report on Bosnia and Herzegovina in the fourth monitoring cycle, adopted on 7 December 2010, §56; ECRI report on Poland in the fourth monitoring cycle, adopted on 28 April 2010, §§114-115; ECRI report on "the former Yugoslav Republic of Macedonia" in the fourth monitoring cycle, adopted on 28 April 2010, §100.

such issues squarely by condemning racist attacks whenever they occur and carrying out adequate investigations into every such case.

[217.] Furthermore the Parliamentary Assembly expressed concern about the increase in violent attacks against religious communities throughout the world, which are not only physical, but also psychological violence against persons because of their religion or beliefs.[408] For example, in its Resolution 1892 (2012) on the "Crisis of transition to democracy in Egypt", the Assembly deplored the situation of Christian communities in the country and that violence continued to be perpetrated against these communities, as well as against other religious minorities, calling on member States to implement the measures listed in its Recommendation 1957 (2011) on "Violence against Christians in the Middle East".[409] In Resolution 2016 (2014) and Recommendation 2055 (2014) the Parliamentary Assembly expressed concern about the violence against Christians and other religious or ethnic communities used by the terrorist group known as "IS" which poses threats against humanity.[410]

[218.] In its Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", the Parliamentary Assembly urged all States in which violence against communities and individuals defined by religion or beliefs has occurred to unequivocally condemn not only attacks on innocent people, but also the use of violence in general, as well as all forms of discrimination and intolerance, including hate speech, based on religion and beliefs. It also urged them to pursue and reinforce their efforts to combat and prevent such cases and bring to justice the perpetrators. The Assembly also called upon member States to respect and protect the cultural heritage of the various religions. It further called on all religious leaders in Europe to condemn attacks on religious communities and other faith groups, and to accept the principle of equal respect for all human beings regardless of their religion.

[219.] Moreover, in its Resolution 1928 (2013) the Parliamentary Assembly encouraged the member States, *inter alia*, to ensure that religion can never be invoked to justify violence against women and girls, such as honour killings, bride burning or forced marriages, and female genital mutilation, even by members of their own religious communities.[411]

[220.] In its Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", the Parliamentary Assembly called on States to combat and prevent cases of violence, discrimination and intolerance, in particular by carrying out effective investigations in order to avoid any sense of impunity among the perpetrators.[412]

iv. Matters relating to international protection on grounds of thought, conscience and religion

[221.] As already stated above[413], if there are substantial grounds to believe that a person, if deported would face a real risk of being subjected to treatment contrary to Articles 2 or 3 of the Convention, for instance in view of religious persecution, the expulsion of this person to a third country may give rise to an issue under these provisions and hence engage the responsibility of the State in question under the Convention.[414]

---

[408] PACE Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", §1.
[409] PACE Resolution 1892 (2012) on the "Crisis of transition to democracy in Egypt", §11.
[410] PACE Resolution 2016 (2014) and Recommendation 2055 (2014) on "Threats against humanity posed by the terrorist group known as "IS": violence against Christians and other religious or ethnic communities".
[411] Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", §§9.6, 11 and 12.
[412] PACE Resolution 2036 (2015) on "Tackling intolerance and discrimination in Europe with a special focus on Christians", §6.6.
[413] See above under 3.C.i
[414] *M.E. v. France*, judgment of 6 June 2013 (Coptic Christian from Egypt who had fled religious persecution in his home country. Violation of Article 3 if the order deporting the applicant to Egypt were to be enforced).; *Collins and Akaziebie v. Sweden*, decision of 8 March 2007; *Izevbekhai and Others v. Ireland*, decision of 17 May 2011. See also *Z.N.S. v. Turkey*, judgment of 19 January 2010, §50: The Court found that there were substantial grounds for accepting that the applicant risked a violation of her rights under Article 3, on account of her religion if returned to Iran. See also *F.G. v. Sweden*, referral to the Grand Chamber with hearing on 3 December 2014, the GC judgment pending.

[222.] On the other hand, the protection afforded by Article 9 is first and foremost a matter for European States to ensure within their jurisdictions, and accordingly very limited assistance can be derived from the provision itself when an individual is under threat of expulsion to another country where it is claimed there is a real risk that freedom of religion would be denied if returned or expelled.[415] With the exception of Articles 2 and 3 of the Convention, under which the responsibility of a Contracting State may be engaged, indirectly, through placing an individual at a real risk of a violation of his or her rights in a country outside their jurisdiction (see above 3.C.i), such compelling consideration do not automatically apply in respect of other provisions of the Convention.[416] The Court has emphasised that it cannot be required that an expelling Contracting State only return an alien to a country where the conditions are in full and effective accord with each of the safeguards of the rights and freedoms set out in the Convention.[417] As a result, protection is offered to those who have a substantiated claim that they will either suffer persecution for, for instance, religious reasons or will be at real risk of death or serious ill-treatment, and possibly flagrant denial of a fair trial or arbitrary detention, because of their religious affiliation (as for any other reason). While the Court has not ruled out the possibility that exceptionally Article 9 may be engaged in expulsion cases, it has stated that it considers it difficult to envisage such circumstances which in any event would not engage Article 3 responsibility.[418]

[223.] On the other hand, while immigration control is normally a matter falling outside the scope of the Convention guarantees, the refusal to allow a resident alien to enter a country on account of his religious beliefs may give rise to issues under Article 9 in particular cases.[419]

[224.] The Parliamentary Assembly of the Council of Europe called, in its Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", on member States to recognise the need to provide international protection for those seeking asylum due to religious persecution. On a more general note, the Assembly also called member States to[420]:
- reaffirm that respect of human rights, democracy and civil liberties is a common basis on which they build their relations with third countries, and ensure that a democracy clause, incorporating religious freedom, is included in agreements between them and third countries;
- take account of the situation of religious communities in their bilateral political dialogue with the countries concerned, in particular those countries in which blasphemy laws are in force;
- promote, both at national and Committee of Ministers level, a policy which takes into consideration, in foreign relations, the question of the full respect for, and the effective protection of, the fundamental rights of minorities defined by their religion or beliefs.

*** * ***

[415] *Z and T v. the United Kingdom*, decision of 28 February 2006 (Pakistani Christians facing deportation to Pakistan could not show that they were personally at such risk or were members of such a vulnerable or threatened group or in such a precarious position as Christians as might disclose any appearance of a flagrant violation of Article 9 of the Convention. See also *Al-Nashif and Others v. Bulgaria*, judgment of 20 June 2002 (deportation on account of having taught Islamic religion without proper authorisation: in view of finding that deportation would constitute a violation of Article 8, no need to consider Article 9).
[416] *Z and T v. the United Kingdom.*
[417] *Idem*.
[418] *Idem*.
[419] *Nolan and K v. Russia*, judgment of 12 February 2009, §§61-75 (exclusion of resident alien on account of activities as a member of the Unification Church: violation). See also *Perry v. Latvia*, judgment of 8 November 2007, §§51-66 (refusal to issue an Evangelical pastor with a permanent residence permit "for religious activities on the grounds of national security considerations: violation), *El Majjaoui and Stichting Touba Moskee v. the Netherlands* [GC], judgment (strike out) of 20 December 2007, §§27-35 (refusal of work permit for position of imam struck out after a subsequent application for permit had been successful).
[420] PACE Resolution 1928 (2013) on "Safeguarding human rights in relation to religion and belief, and protecting religious communities from violence", §§ 9.2, 9.3, 9.7 and 9.14.

Appendix[421]

Selection of relevant good practices from member States

The promotion of awareness and tolerance of religious diversity / *La promotion de la sensibilisation et de la tolérance de la diversité religieuse*

[1.] In **Italy,** the fundamental elements of the constitutional law governing the organisation of the State include the principle of pluralism within the framework of the value of democracy and the principle of equality.

[2.] The Radio and Television of the **Slovak Republic** broadcasts programmes, which *inter alia* develop national awareness and cultural identity of its citizens regardless of faith and religion. The programmes reflect diversity of opinions and political or religious approaches in order to promote the development of civil society. It provides a space for all churches and religious organisations registered according to special regulation. The **Romanian** Law on Broadcasting from 2002 stipulates that broadcasting and retransmission of services and programmes has to accomplish and ensure political pluralism and cultural, social, linguistic and religious diversity, etc.

[3.] **Finland** launched a Diversity Charter in 2012 which some 40 organisations had signed by May 2014, most of them private companies. A network has been established to implement the Charter under the coordination of the Finnish Business & Society and supported by the Ministry of Employment and the Economy. The network prepared an action plan, has organised workshops and annual seminars. It also maintains a webpage and a data bank on the best practices of diversity management and offers an on-line training package "How to get started?" and a self-assessment tool. Furthermore, Finland is promoting diversity management in public sector organisations under the *YES Equality is Priority* project, funded from the EU PROGRESS programme. In 2013, the project mapped diversity management in the public sector and organised a seminar for municipal leaders to describe the benefits of diversity management.

[4.] **Spain** created a "Foundation for Pluralism and Coexistence" with the purpose of (i) promoting freedom of religion by cooperation with minority faiths; (ii) acting as a space for investigation, debate and a starting place for public policies concerning freedom of religion and conscience. Furthermore, a "Religious Pluralism Observatory" was created with the main objective of guiding governments and authorities in implementing management models adjusted to the constitutional principles and the regulatory framework governing the exercise of the right to freedom of religion. It also provides updated data at municipality level on places of worship of different faiths, makes guides to support the governance of religious diversity, identifies and promotes good practices of governance of religious diversity. The "Advisory Committee on Religious Freedom" under the Ministry of Justice provides advice to the Government on religious freedom. The Committee can also advise or inform other public administrations upon request. It is mandated to issue reports on any state regulation aimed at promoting religions as well as *notorio arraigo* resolutions. The Committee is presided by the Minister of Justice, has seven members from ministries dealing with religious issues, six members with expertise in the field of religious freedom, and twelve representatives of the churches, faiths and religious communities and federations recognised with *notorio arraigo* status. The Committee fulfills the function of making proposals, preparing annual reports and even recalling information from any authority concerning religious freedom. It works actively in focused teams on issues concerning the

[421] The examples are presented in the language in which they were submitted. They are based on contributions received from a large number of member States contained in a compendium of national good practices (CDDH-DC(2014)004rev2). This document will be updated regularly on the CDDH's website on "Human rights in cultural diverse societies".

opening cult centres, religious marriages, religious festivities, religion in the workplace, cemeteries for religious minorities, etc.

[5.] In the **United Kingdom**, the Government has taken initiatives and adopted policies to promote equality, diversity and human rights. Some examples are:

- Equality, Diversity and Human Rights Strategy for the Police Service 2010,
- Creating a fairer and more equal society 2014 – Department for Culture, Media & Sports, Government Equalities Office and Department for Education,
- The Deputy Prime Minister, Nick Clegg, launched in April 2014 the Nazi Legacy Foundation's Diversity Programme at the National Portrait Gallery.

[6.] With the enactment in **Ireland** of the 2014 Human Rights and Equality Commission Bill, the new Human Rights and Equality Commission started providing advice and assistance regarding equality and human rights issues in an integrated way. Ireland also undertook a cross-departmental review of its migrant integration strategy, of which an important element will be promoting intercultural awareness and combating racism and xenophobia.

[7.] En **Belgique** francophone, un Festival des Libertés est organisé annuellement par le Centre d'Action Laïque. L'exposition « Lieux sacrés, Livres sacrés » est organisée à Anvers, en Belgique néerlandophone, consacrée aux trois grandes religions du monde : le judaïsme, le christianisme et l'islam. Plus de 200 objets précieux et ouvrages emmènent faire un pélerinage imaginaire à Rome, à la Mecque et à Jérusalem. Parallèlement à l'exposition, un programme culturel riche est organisé : promenades, théâtre, rencontres dans une église, une synagogue ou une mosquée, musique, etc.

[8.] In **Finland,** youth actors take into account religious holidays, such as Ramadan, in the planning of their activities; for example youth camps are not organised during religious holidays. They have also considered alternatives to handshake as ways of showing respect for religious habits. Religiously and politically independent youth work and activities do not include any religious rituals. However, anyone may *e.g.* pray or quiet down independently in a specially reserved room as they wish. Furthermore, a project to question prevailing norms has drawn attention to respect for diversity and differences and disproved "normality" presumptions. The project has produced good practices for teaching teachers to identify normative speech and behaviour in their environment and activities.

Promoting intercultural dialogue / *Promouvoir le dialogue interculturel*

[9.] The **Estonian** Ministry of the Interior is organising roundtables for the representatives from different religious communities and denominations and the feedback on these events has been positive. The **Romanian** State Secretariat of Religious Affairs has organised a number of national and international manifestations which aim at promoting inter-religious and inter-confessional dialogue and at protecting freedom and fundamental rights. This institution supports, even financially, manifestations organised by the religious cults and meetings and conferences aimed at enhancing interreligious communication.

[10.] In **Finland**, the national religious leaders representing Islam, Christianity and Jewishness issued a joint statement in 2011 in support of freedom of religion. The same year Jews, Muslims and Christians in Finland founded an interreligious association to support the maintenance of societal and religious peace in the country. Also, the Finnish Ecumenical Council promotes communion between communities based on Christianity and constitutes a forum for joint discussions among Evangelic-Lutheran, Orthodox, Catholic and many Free-Church actors. The Advisory Board for Ethnic Relations under the Ministry of the Interior consists of a national advisory board and seven regional advisory boards across the country. It has established a permanent working group on religious and cultural dialogue, composed of representatives from ministries, churches and religious communities. It constitutes a forum for continuous dialogue and exchange of information between

religious communities and authorities. It also raises problematic interreligious and/or intercultural issues in the search of solutions.

[11.] En **Belgique**, une plate-forme de concertation a été créée en 2014 entre les représentants des cultes reconnus et les organisations non confessionnelles et la Région flamande pour organiser un dialogue avec et entre les communautés philosophiques. Les représentants des convictions philosophiques et l'autorité flamande ont pris l'engagement de se concerter tous les trois mois sur plusieurs sujets de société et, si cela s'avère pertinent, d'agir ensemble dans le respect des valeurs fondamentales telles que la liberté, l'égalité, la solidarité, le respect, la citoyenneté, etc. L'autorité joue à cet égard un simple rôle de facilitateur et ne participent pas activement au dialogue.

[12.] La **Suisse** a créé en 2006 une plateforme de dialogue « Conseil suisse des religions » composée de personnalités dirigeantes des trois Eglises nationales : la communauté juive, la paroisse orthodoxe et d'organisations islamiques. Ce Conseil fonctionne également comme un partenaire de contact pour les autorités fédérales. De 2009 au 2011 la plateforme « Dialogue avec la population musulmane – Echange entre les autorités fédérales et les musulmans établis en Suisse », avait pour but de mettre fin aux craintes et aux préjugés qui entourent l'islam dans la société majoritaire et de lutter contre l'hostilité et la stigmatisation croissantes dont sont victimes les personnes considérées comme musulmanes. De ce dialogue est ressortie la reconnaissance des lignes directrices fixées dans la Constitution, à l'instar de l'égalité devant la loi, de l'Etat de droit et de la démocratie. Par ailleurs, le rapport relatif à ce dialogue présente les mesures prises par la Confédération en vue d'encourager l'intégration et l'égalité des chances des musulmans et de garantir la coexistence pacifique de toutes les personnes vivant en Suisse. Un exemple de ces mesures est le groupe de travail «Programmes de formation ou de formation continue pour les imams et les personnes chargées de l'encadrement religieux», mis en place en 2010. De plus, le Programme national de recherche « Collectivités religieuses, Etat et société », achevé en 2012, avait pour objectif d'étudier scientifiquement les mutations du paysage religieux suisse au cours des dernières décennies et de fournir des résultats exploitables pour les autorités, la sphère politique, les écoles et les collectivités religieuses. Le but était de favoriser la compréhension entre les collectivités religieuses, mais aussi des collectivités religieuses envers les personnes sans religion.

[13.] "**The former Yugoslav Republic of Macedonia**" has hosted a number of international events such as the World Conference on Dialogue among Religions and Civilizations (2007, 2010 and 2013) and the Meeting of Leaders of Islamic Religious Communities in the Balkans. In 2011, the country opened a Memorial Holocaust Centre of Jews and an International Declaration honouring the memory of Holocaust victims was adopted. On the occasion of Europe Day in 2011, a joint Declaration was adopted by the leaders of the Islamic religious community and the Jewish community. In 2011, the Commission for Relations with Religious Communities and Religious Groups published a Map of Places of Worship of the five largest religious communities. In 2012, a social awareness campaign for religious tolerance was commissioned by the Government which included a first ever joint prayer between Christians and Muslims. This theme was also used for a two-minute clip "Ten Meters Apart" which won the Titanium Lion award in at Cannes International Festival of Creativity in 2013.

[14.] In **Austria**, the Task Force "Dialogue of Cultures" under the Ministry for Europe, Integration and Foreign Affairs implemented initiatives such as:

- The 5th Global Forum of the United Nations Alliance of Civilizations held in Vienna in 2013 under the overall title "Promoting responsible leadership in diversity and dialogue". In this connection a youth event was also organised.
- The training project entitled "Training in dialogue and integration for imams, spiritual advisors and mosque associations" implemented in partnership with the Islamic Community in Austria as well as the Turkish Presidency of Religious Affairs (Diyanet). The project also includes training for "female delegates" of mosque associations and for voluntary delegates for dialogue.

- The National Action Plan for Integration has since 2011 focused on intercultural and interreligious dialogue. A platform "Dialogue Forum Islam" was created in 2012 which aims at exchanging thoughts and addressing issues, such as Islamism, islamophobia and integration.

[15.] Both **Austria** and **Spain** are co-founders, alongside Saudi Arabia, of an international organisation "King Abdullah Bin Abdulaziz International Centre for Interreligious and Intercultural Dialogue" which is based in Vienna. The Holy See is a Founding Observer.

[16.] In **Portugal**, the High Commission for Migration, Public Institute provides for civil society, free of charge, a training module on inter-religious dialogue, in which the importance of religions and beliefs in a pluralistic society and world is discussed. Furthermore, in 2011 it produced a brochure "*Inter-religious Dialogue. 33 Ideas to Think and Act*" and a leaflet "*Inter-religious Dialogue*".

Striking a fair balance between freedom of thought, conscience and religion and other rights, in particular freedom of expression, freedom of peaceful assembly and freedom of association / *La recherche du juste équilibre entre la liberté de pensée, de conscience et de religion et les autres droits, en particulier la liberté d'expression, la liberté de réunion pacifique et la liberté d'association*

[17.] In 2012, the **Polish** Supreme Court, in the context of examining case concerning an artist who had torn up the Bible during his concert making comments considered as insulting by some persons, adopted a resolution which provided some clarification on the balancing of various freedoms. It stressed the need to differentiate acts being demonstratively insulting to one's feelings from the expressions consisting of public presentation of opinions that constitute realisation of the freedom of expression and of conscience, also in the form of artistic creation. An expression or behaviour which expresses negative attitude to an object of religious worship or which uses this object as part of artistic creation, does not constitute an insult to the object of religious worship (and in consequence does not constitute an insult to religious feelings of other persons) if in view of its form it does not contain humiliating or abusive elements. The character of a given expression, behaviour or artistic creation should be assessed in objective manner, by reference to cultural norms binding in a given society. The artistic or scientific goal of the action of the perpetrator is, however, not sufficient to exclude insulting character of this action in view of its form.

[18.] In a judgment concerning the revocation of asylum status to a foreign citizen who intended to produce a film in **Spain** ("Innocence of Muslims") jeopardizing public security, the Spanish Supreme Court found that, in the light of the margin of interpretation doctrine, there had been no breach of Articles 9 and 10 of the Convention when balancing freedoms of expression and religion and national security concerns.

[19.] In addition, **Spain** and the **Holy See** have developed criteria on the reconciliation of freedom of expression and religious freedom. Particularly, the Audiovisual Catalonian Council has published recommendations on the matter in 2002.

Thematic issues / *Questions thématiques*

A. Individual right to freedom of thought, conscience and religion */ Le droit individuel à la liberté de pensée, de conscience et de religion*

Wearing of religious symbols and clothing (dress codes) */ Port de symboles et de vêtements religieux (codes vestimentaires)*

[20.] In **Poland**, persons wearing headgear in accordance with their denomination have a possibility to enclose photos showing them wearing such a headgear, to their passport applications, visa

applications, applications for documents issued for foreigners or in the documents of asylum seekers, in accordance with the requirements set by law (e.g. appropriate visibility of the oval of the face, confirmation of membership of the religious community). Also the **Serbian** Law on Identity Cards establishes that a person, who in conformity with his or her national or religious affiliation or folk customs, is wearing a hat or a scarf as an integral part of his or her costume, can be photographed with a hat or a scarf, in compliance with the manner of obtaining biometric data. **Spain** also allows that personal photographs in official documents can be made wearing veils or scarfs in accordance with a religious identity (not only Islamic, but also Catholic nuns, for example). This right is recognised in the 2006 General Commissary Instruction on Foreigners and Documentation on the condition that the oval of the face is recognisable and the acknowledgment of belonging to the religious community.

[21.] The **Turkish** Constitutional Court held in 2014 that there had been a breach of freedom of conscience and religion on account of a lawyer with headscarf being prohibited attendance in a court hearing. The head-scarf ban on female public officers has been lifted by amending the "Regulation on Dress-Code for Personnel of Public Institutions and Establishments". In accordance with a decision by the **Swedish** Chancellor of Justice, the refusal of women dressed in niqab to attend an oral court hearing was considered not to be proportionate to the aim pursued. As there was no evidence that the women's clothing had been a threat to maintaining court order, the refusal was thus considered a violation of these women's right to freedom of religion.

Manifestation of religion and belief in various settings ***/ Manifestation de la religion et des convictions dans différents contextes***

Individual rights / *Droits individuels*

[22.] Au **Portugal,** le Code Civil admet en son article 1651, paragraphe 2, l'enregistrement de tout mariage, qu'il soit célébré ou non selon la procédure civile ou religieuse prévue par la loi, à la condition qu'il ne soit pas contraire aux principes fondamentaux de l'ordre public international de l'Etat portugais.

At the workplace / *Au travail*

[23.] In "**the former Yugoslav Republic of Macedonia**" Orthodox Easter, Christmas, and Ramazan Bajram (end of Ramadan) are national holidays. Other Christian, Islamic, and Jewish holidays, which are not national holidays, are government-designated religious holidays for adherents of those faiths. In **Serbia**, Christmas day (7 January) and Easter as from Good Friday to Good Monday are state holidays. Furthermore, employees have the right not to work on the following days of religious holidays: the members of the Orthodox community– on the first day of their *slava;* members of the Roman-Catholic and other Christian religious communities– on Christmas day and for Easter holidays from Good Friday to Good Monday according to their religious calendar; members of the Islamic community– on the first day of Ramadan and on the first day of Kurban Bayrami; members of the Jewish community– on the first day of Yom Kippur.

[24.] In **Poland,** employees belonging to churches and religious organisations whose holidays do not constitute official holidays, are entitled to be exempted from work for the time necessary to celebrate their holidays as required by their religion on the condition that the time will be worked off. Persons may submit to their employer a request for a day off not later than seven days before the date of the exemption. The employer shall inform the employee about the conditions of working off at least three days before that date. However, in case of religious holidays celebrated on a given day of each week, the employer, upon the employee's request, shall fix an individual work schedule for this employee. Persons belonging to Jewish communities and members of the Seventh-day Adventist Church are entitled to exemption from work for the time of Shabbat. Regulations regarding holidays are included in statutes governing relations between the State and the respective churches and religious organisations

[25.] L'arrêt de la Cour constitutionnelle du **Portugal** nº 544/2014 concerne une personne appartenant à l'Eglise adventiste du septième jour. Cette personne a invoqué sa foi religieuse pour refuser d'assurer une garde de nuit (vendredi à samedi) et la journée de travail du samedi. Selon le rapporteur de l'arrêt, il n'est pas envisagé dans les relations de travail d'aujourd'hui qu'un salarié refuse de remplir ses obligations au nom du respect de son choix existentiel. Le respect de la liberté de conscience ne peut pas être avancé pour exiger unilatéralement la rupture du lien de travail. La liberté religieuse admet, et impose dans certains cas, une accommodation raisonnable aux exigences du travail.

[26.] Freedom of religion at the workplace is protected in **Spain** not only by the agreements with the major religious communities (Catholic, Evangelist, Islamic and Israelite), but also in many labour collective agreements in various sectors, at the autonomous level, and especially in the cities of Ceuta and Melilla. These labour agreements usually (i) prohibit religious freedom as a ground for denying a promotion in the company, (ii) provide for the classification as a serious fault any behaviour which infringes this freedom, and (iii) prohibit discrimination on any ground in access to employment.

In the armed forces / *Dans les forces armées*

[27.] In **Serbia**, in order to fulfil the freedom of confession, religious services are organised in the armed forces. Mutual relations between the Ministry of Defence and churches, i.e. religious communities, pertaining to the performance of the religious service in the armed forces are defined in separate agreements.

[28.] In **Poland**, persons performing military service are entitled to participate in religious acts and rituals, to perform religious duties and celebrate religious holidays in accordance with their denomination, and to possess and use objects necessary for cult and religious practices. Military priesthoods for the most numerous denominations function in the armed forces employing military chaplains. All military units, academies, hospitals and also all soldiers participating in missions abroad are covered by religious service. Persons who for religious reasons or due to moral principles cannot or do not wish to avail themselves of the nutrition provided to all members of armed forces, can apply for a financial equivalent for nutrition.

[29.] In **Finland**, the general ordinance for military service (2009) takes account of such issues as equality, non-discrimination, and special issues and practical arrangements concerning religious practice (separate times for prayers, special diets, exceptional dates of festivals, fasting arrangements and spiritual support etc.). Those conscripts who have a special diet for religious reasons are treated equally with others with a special diet.

[30.] In **Spain**, in addition to the provision of religious assistance to members of the armed forces in accordance with the Law on Military Career, the Ministry of Defense and the Evangelic Communities Federation jointly organizes, since 2012, a yearly "Prayer Breakfast" (in Rota Naval Base, Cádiz, in 2012, in El Goloso Military Camp, Madrid, in 2013 and in Torrejón Air Base, Madrid, in 2014).

At the reception centre/ *Au centre de réception*

[31.] In **Croatia,** pursuant to the rules issued by the Minister of the Interior, foreign nationals at the reception centre can choose and consume food in accordance with their religious beliefs, and they can also contact religious communities and practice their religious rites, always respecting the religious and cultural views of others. These rules have been translated into English, Turkish, Albanian, Arab, Italian and French and are displayed at the billboard at the reception centre.

[33.] In **Poland**, foreigners placed in a guarded centre, are entitled *inter alia* to possess objects of religious cult, perform religious practices and avail of religious services. In each centre foreigners are entitled to nutrition compatible with the diet as declared with them in accordance with their religion. It is also possible to adjust the timing of meals to the religious norms (e.g. fast during the month of

Ramadan or during Catholic or Orthodox holidays). The centres also guarantee respect for other religious principles, e.g. as regards clothing of persons staying there or access to medical treatment (*e.g.* access to medical staff of the same sex). The Border Guard officials undergo special training to improve their understanding of intercultural issues and increase their skills to deal *inter alia* with vulnerable religious groups.

[34.] **Spain** also provides religious assistance in centres for foreigners as provided for in the conventions between the Ministry of Interior and the Catholic Church (2014) and the Islamic, Evangelic and Israelite Federations (2015). These instruments establish individual and communal assistance and provide instructions on worship on religious holidays and on adequate facilities, diet (Kosher, Halal), etc.

Rights of persons deprived of their liberty / *Droits des personnes privées de liberté*

[35.] In **Finland**, prison service authorities and the Evangelic-Lutheran Church have set up an advisory board for spiritual counselling in prisons. In activities related to the practice of religions in prisons, the churches and other religious communities and prison service authorities apply a cooperation procedure where the Criminal Sanctions Agency and the churches negotiate on their mutual cooperation at least every second year. An extensive project was launched between the Evangelic-Lutheran Church and the Criminal Sanctions Agency to study religion and spirituality in prisons. The project aims at producing research information and other facts to support the maintenance and guidance of prison activities that enable religious practice in a manner taking account of the prisoners' rights and the implementation thereof in practice. The churches and other religious communities have founded a network for Christian work in prisons as a cooperation body. Hundreds of representatives of different churches work and volunteer upon the permission of the prison director. Thus prisoners are ensured an opportunity to choose, according to their personal needs whether to participate in religious practice. The posts of prison chaplains and prison deacons are full-time posts filled by representatives of the majority religious community among the prisoners in each prison. Prisons are obliged to provide premises suitable for the practice of religion.

[36.] The **Polish** law explicitly provides that persons staying *inter alia* in penitentiary units and arrests enjoy the right to participate in acts and religious rituals and the right to fulfil religious duties and celebrate religious holidays according to principles of one's denomination. As far as possible, convicts should receive nutrition taking into account religious or cultural requirements, which is understood as an obligation imposed on the prison service of the penitentiary units to make efforts to create such a possibility (during 2009 to 2013, 12,356 persons benefited from this opportunity, in 2013 the number was 5125 persons). In penitentiary units and arrests, representatives of 23 churches and religious organisations conduct regular activities ensuring access to religious services.

[37.] In **Serbia**, the Law on Execution of Criminal Sanctions prescribes that convicted persons shall have the right to practice religious rituals and be visited by clergy. If there is a sufficient number of persons of the same faith in the institution, the warden shall at their request allow a clergy of that faith to visit them regularly or to conduct regular services or education in the institution. Religious services shall be performed in a separate and appropriate room in the institution. The times, duration and manner of exercising the rights is specified in more detail in the regulation on house rules. There are plans to establish chapels at the largest institutions for convicted persons for them to exercise their freedom of religion.

[38.] In **Italy**, spiritual assistance to those who are subjected to a regime of deprivation of personal liberty is guided by the respect of religious freedom and the right to spiritual assistance which is codified by rules governing the prison system. The prisoners and inmates who wish to exhibit, in their own room or in their own individual space of belonging, images and symbols of their religious faith are allowed to do so. They are also allowed, during leisure time, to practice the worship of their religion, provided that this does not create harassment to the community. For the celebration of the

rites of the Catholic faith, every institution has one or more chapels to serve the needs of the religious services.

[39.] The **Ukrainian** Law of "On Freedom of Conscience and Religious Organisations" provides for that worship and religious rites in detention. The **Slovak** Act on Detention on Remand provides a duty to take into account the cultural and religious traditions of defendants concerning the provision of food. The provision of sacred and pastoral services is *inter alia* governed by special regulations of the Ministry of Culture as well as by the agreements concluded between individual remand prisons and churches and religious organisations. L'armée **suisse** a également développé des lignes directrices sur le thème de la religion dans l'armée.

[40.] The **Irish** Prison Service provides a wide range of rehabilitative programmes that include spiritual services. These programmes are available in all prisons and all prisoners are eligible to use the services. The Irish Prison Chaplain Service has a crucial role in the provision of pastoral and spiritual care to the entire prison community and seeks to meet the needs of all denominations. Chaplains are mostly Roman Catholic, but also come from the Church of Ireland and Methodist denominations. Spiritual advisors of other churches/religions can also attend the prisons on a visiting basis, subject to normal visit rules.

[41.] In **Spain**, the General Directorate of Penal Institutions issued Instruction 6/2007 which regulates religious activity by ministers of worship and includes the following functions: office of worship, ritual services, instruction and moral and religious advice provision, and where appropriate, funeral. Halal and Kosher food is also provided in prisons. The Spanish experience in this field was reflected in a workshop held in Madrid in 2013 on the role of worship ministers regarding non-radicalization in prisons.

Situations in which individuals are obliged to disclose or act against their religion or beliefs / ***Situations dans lesquelles une personne se voit dans l'obligation de divulguer sa religion ou ses convictions ou d'agir d'une manière contraire à sa religion ou ses convictions***

[42.] In **Greece**, pupils in primary and secondary education of differing religious convictions can be legally exempt from religious instruction and the related school exams upon request of their parents or guardians, without being required to declare their religious convictions or the reason for the exemption. Such exemption also applies to any other obligation of the pupils directly or indirectly linked to the subject of religious studies (Morning Prayer, church attendance, etc.). With a view to protecting personal data, the religious status or beliefs of pupils in primary or secondary schools may not be mentioned on the school reports.

[43.] In the view of the **Finnish** Constitutional Law Committee of Parliament, events in daily school activities which can be considered as religious practice such as morning assemblies with religious content and instructed graces before or after meals may be problematic, especially in light of the case-law of the European Court of Human Rights. If schools arrange religious morning assemblies, they must inform the pupils about them in advance and ensure that every pupil has an opportunity to be absent from such assemblies. Education providers must ensure that no-one is obligated to say grace against his or her conscience. However, it is important to ensure that the fundamental rights of all pupils are realised at the same time and that those pupils whose upbringing and conviction include the practice of saying grace have an opportunity to follow the practice. The school administration has instructed schools to replace grace with *e.g.* the practice of quieting down and showing respect for meals.

Medical treatment issues / ***Questions relatives aux traitements médicaux***

[44.] The **Serbian** Law on Health Care prescribes that every citizen has the right to be provided health care while respecting the highest possible standard of human rights and values, i.e. he or she has

the right to physical and mental integrity and to the security of his or her personality, as well as to the respect of his or her moral, cultural, religious, and philosophical affiliations. **Spain** has developed a guide on management of religious diversity in health centres.

[45.] In **Poland**, a patient staying in healthcare units providing stationary and 24-hour healthcare services is entitled to pastoral care. In case of deterioration of health or risk to life, healthcare units are obliged, at their own cost (unless separate legal regulations provide otherwise), to enable their patients contacting a cleric of their denomination. Patients should receive information on chaplains of their denomination who provide pastoral care in a given hospital, how they can be contacted and where and when religious services are held. If there is no representative of the patient's religion in a given hospital, the patient should be informed who will be responsible for enabling the contact. Implementation of the patient's rights can be discharged by the health-care units in various forms (e.g. on the basis of a civil-law contract with clerics, labour law relationship, other forms such as enabling access of a cleric to the hospital).

[46.] In **Finland**, the National Advisory Board on Social Welfare and Health Care Ethics has been created for the purpose of discussing general principles in ethical issues in the field of social welfare and health care and concerning the status of patients and clients, as well as to publish related recommendations. The Advisory Board submits initiatives, publishes statements and provides expert assistance, prompts public debate, and disseminates information on national and international ethical issues in social welfare and health care. The Ministry of Social Affairs and Health consults the Advisory Board concerning e.g. health care issues related to the freedom of thought, conscience and religion, such as the freedom of conscience *vis-à-vis* abortion, and the freedom of religion *vis-à-vis* non-religious circumcisions of boys. Also, the Ethical Advisory Board of the Finnish Medical Association discusses questions concerning medical ethics and issues ethical statements.

Right to education of children in conformity with the parents' religious and philosophical convictions ***/ Droit à l'instruction des enfants conformément aux convictions religieuses et philosophiques des parents***

[47.] According to the **Ukrainian** Law "On Protection of Childhood", teachers of religious beliefs and religious preachers are obliged to educate their pupils in the spirit of tolerance and respect for people who do not practice religion and believers of other faiths. **Polish** schools are under the obligation of taking didactic measures to shape attitudes of openness and respect for religious and cultural diversity among pupils and transmit to all children knowledge about religions and denominations. Information on world religions and their impact on the development of civilisations and history of various countries is addressed within the framework of such subjects as history and civic knowledge. In **Finland**, the instruction in different subjects must be politically independent and secular. The instruction of religion does not include religious practice. The national core curricula for basic education adopted by the National Board of Education in 2004 is however under revision and there will in future be an increased emphasis on the knowledge of different religions and irreligiousness and on the acceptance of diversity, alongside the knowledge of one's own religion.

[48.] In **Greece**, school textbooks have been and continue to be revised to further promote understanding and respect for different cultures and religions, as well as to enhance interest in other people's religion, beliefs and ways of life. References to different religions around the world are made in school textbooks of religious instruction, especially in junior and senior high school. Legislation was also introduced to recognise the religious holidays of different religious groups (in addition to those of the Orthodox Church), in order to ensure the equal treatment of pupils irrespective of their religious beliefs.

[49.] The **Italian** State grants to religious denominations with whom it has concluded a treaty, the right to respond to any requests from students, their families or educational bodies, with regard to the study of religion and its implications. Such activities fall within the sphere of the complementary didactic activities determined by the school institution, based on methods agreed upon between the

religious denomination and such institutions. In the **Slovak Republic** religious education as a school subject is ensured by church or religious organisations. The religious education is taught at elementary and secondary schools. The teaching is performed by employees with the professional and pedagogical qualification, who are also authorised by church or religious organisation in compliance with their internal regulations. In **Serbia**, the curriculum for religion instruction is adopted in agreement between the Minister of Education and the Minister of Religion, at the proposal of the traditional churches and religious communities. A board has been established for the purpose of harmonizing the proposals for religious curricula provided by the traditional churches and religious communities. Textbooks and other teaching aids for religious instruction in secondary education are approved by the Minister of Education, at the proposal of the traditional churches and religious communities.

[50.] In **Finland**, according to the Basic Education Act providers of basic education are obliged to arrange religious education in accordance with the religion of the majority of pupils. Pupils who do not belong to any religious community and pupils belonging to a religious community who is not provided religious education in accordance with their religion are taught ethics when requested by their parent/carer. The provider of basic education must organise ethics education if there are at least three pupils entitled to it.

[51.] In **Poland**, legal regulations on the organisation of the school year make it possible for the school director to plan classes in such a way so as to ensure that pupils who celebrate religious holidays on days that are not statutory holidays do not have to attend classes on these days. A school director after having consulted the school council can fix additional holidays in a given school year *e.g.* during religious holidays that are not statutory holidays. The total number of such additional free days during the school year is up to six days for primary schools, up to eight days for lower-secondary schools and up to ten days for upper-secondary schools. Also individual pupils (or their statutory representatives in case of minors) belonging to churches or other religious organisations whose religious holidays are not statutory holidays, can submit to their school a request for the exemption from schoolwork on these days, either at the beginning of the school year or not later than seven days before the date of the planned exemption. The school shall determine the manner of catching up the lost classes. Furthermore, one of the forms of ensuring the constitutional right of parents to ensure their children's moral and religious upbringing and teaching in accordance with their convictions is that "the religion of a church or other legally recognised religious organization may be taught in schools". At the same time the Constitution stresses that "other peoples' freedom of religion and conscience shall not be infringed thereby." Currently about 28 churches and religious communities with legal personality provide religious education in public pre-schools and schools. At the same time, courses in ethics are provided upon the wish of parents or pupils. Depending on the declared choices of parents (or pupils who have reached maturity), a pupil can attend religious or ethics classes, both of them or none of them. As from September 2014, the organisation of religious or ethics classes should be ensured to any interested pupil, even if there would be only one person declaring such a wish.

[52.] In **Sweden,** the right to education of children in conformity with the parents' religious and philosophical convictions was raised in the following two judgments. In the first case the parents of four siblings who received an online schooling at home claimed that the schools could not provide the siblings with what they needed in terms of kosher food, possibility to pray, security etc. The Highest Administrative Court held that when providing education for the siblings there were reasons to take into account their particular needs. The court also noted that the law on education established that similar situations should be handled within the public school system. It concluded that the case did not constitute exceptional circumstances as required by the law and the siblings were consequently denied home schooling. The second case concerned parents belonging to the laestadian religious community who, on the basis of their religious belief, requested exemption for their daughter from participating in dance during sports class. The Administrative Court of second instance noted that the school had not done enough to try to find alternative ways for the pupil to show her motor skills in connection with music. Consequently, it concluded that the religious belief of the pupil and her parents should be given priority over the possibilities that the schools should have to adapt the education to the needs of the

pupil. The court therefore held that there were exceptional reasons to exempt the student from participating in dance.

[53.] The **Spanish** laws on education provide that the State and autonomous regulations on the setting up of curricula must include the study of religious facts or secular alternatives in accordance with the parents' or tutors' religious or philosophical convictions. Spanish law requires taking into account, at the different stages of the educative curricula of basic education, the prevention and peaceful resolution of conflicts in all areas of personal, family and social life, democracy and human rights sustainable values, including the prevention of gender violence and the study of Holocaust as a historical fact. These principles are effectively developed in each educational institution, and must be set out in detail in its educational project (Art. 121 of the Organic Law 2/2006), including the way of approaching the diversity of pupils and the plan of coexistence, under the guidance and supervision of each educational public authority.

B. State relations with religious communities */ Relations de l'Etat avec les communautés religieuses*

Autonomy and rights of religious communities / *Autonomie et droits des communautés religieuses*

[54.] The **Serbian** Constitution stipulates that churches and religious communities are equal and separated from the State and have autonomy to freely organise their internal structure, religious matters, to perform religious rites in public, to establish and manage religious schools, social and charity institutions.

[55.] In **Poland**, relations between the State and churches and other religious organisations are based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. Churches and other religious organisations have equal rights. Public authorities should be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and should ensure their freedom of expression within public life. The right of churches and other religious organisations to determine the contents of teaching about their own religion (denomination) and to ensure and prepare qualified teachers to this end, is fully respected in schools. Curricula and handbooks are elaborated and approved by competent authorities of the respective religious communities and are sent only for information to the Minister of National Education. The qualifications of teachers are determined by the churches or religious organisations in agreement with the Minister of National Education.

[56.] In **Italy**, both the religious denominations whose legal personality has been recognised and those without legal personality status, have the right of free exercise of religious freedom guaranteed and regulated at the constitutional level. The religious denominations that have not concluded a treaty with the Italian State can take advantage, at tax and fiscal level, of the same benefits and deductions in force for non-commercial entities, given their particular form of non-profit organisations.

[57.] En **Belgique,** les cultes non reconnus peuvent prendre la forme d'une A.S.B.L (Association sans but lucratif).

[58.] While the **Finnish** Religious Freedom Act contains provisions on *inter alia* registered religious communities, membership in them, procedures for joining and resigning from such communities, and practices regarding religious oath and affirmation, special Parliamentary Acts on the Evangelic-Lutheran Church and the Orthodox Church regulate the functioning of these religious communities. Anyone, according to their view, may join a religious community that accepts them as members. It is for religious communities themselves to decide whether their members may belong to other communities as well. (The right to resign from a religious community is recognised by way of

filling a written notice to that effect with the community or any Local Register Office (a state agency). The Local Register Office sends the resignee a written confirmation of the resignation).

[59.] The autonomy of religious communities are recognised in **Spanish** law, essentially by the Organic Law 7/1980 on Religious Freedom (Arts. 2 and 6), and by agreements with the major confessions. Each religious community can adopt the form that suits its interests (mainly the non-profit associative, but also others such as mere goods communities, etc.). To benefit from the religious status they must be registered in the Religious Entities Registry (Ministry of Justice). Autonomy is also recognised by the participation in the Advisory Committee on Religious Freedom, which includes 12 representatives of these communities.

Registration and recognition / *Enregistrement et reconnaissance*

[60.] In "**the former Yugoslav Republic of Macedonia**", the 2007 Law on the Legal Status of Church, Religious Community, and Religious Group ensures equal legal status to all churches, religious communities, and religious groups, providing them with equal conditions for registration and building religious facilities. The Skopje Court II is responsible for registering religious groups.

[61.] In **Poland**, the registration only results in acquiring legal personality by a given community as there are no legal obligations that would make religious activity by persons creating religious communities dependant on registration. Churches and other religious organisations acquire legal personality and establish relations with the Polish State by way of either international agreement, statute governing relations between the State and respective churches or religious organisations, or registration in the Register of churches and other religious organisations held on the basis of the *Act on guarantees for freedom of conscience and denomination* (by March 2014, 174 churches and other religious organisations have established relations with the Polish State in one of these forms).

[62.] En **Belgique,** certains cultes peuvent obtenir une reconnaissance de l'Etat fédéral soit pour des raisons *historiques* (le culte catholique, le culte protestant ou le culte israélite), soit parce qu'ils *répondent à des critères jurisprudentiels* (culte anglican, islamique, et culte orthodoxe). Le service compétent du ministre de la Justice réalisera une étude approfondie pour vérifier si toutes ces conditions ont été remplies de manière cumulative. Si cela est le cas une demande d'avis s'ensuit auprès de diverses instances en vue de vérifier l'impact financier d'une éventuelle reconnaissance sur les communautés locales et le niveau fédéral en ce qui concerne les traitements des Ministres du culte et des délégués. Si les avis obtenus sont favorables, le Conseil des Ministres décide de soumettre ou non au Conseil d'Etat un avant-projet de loi portant reconnaissance du culte ou de l'organisation non confessionnelle en question. Le Conseil des Ministres décide finalement si l'avant-projet de loi est transmis à la Chambre des représentants. Celle-ci examine le projet de loi et octroie une subvention de structuration et/ou accorde la reconnaissance. Pour toute décision négative prise au cours de la procédure, le culte ou l'organisation non confessionnelle peut introduire un recours devant le Conseil d'Etat. La loi du 21 juin 2002 a pour objet le support par l'autorité fédérale des traitements et pensions des délégués des organisations reconnues par la loi qui offrent une assistance morale selon une conception philosophique non confessionnelle.

[63.] In **Greece**, Law 4301/2014 introduced a new form of legal personality which is open to religious communities and their organisations. A union of individuals belonging to the same religious community may acquire the status of a "religious legal person", if they so wish, by submitting before the competent court a request for registration, signed by at least 300 members of the community. The decision to register a "religious legal person" is taken by the court, without government interference. At least three "religious legal persons" may associate to form an "ecclesiastical legal person". The legal personality of the Catholic Church in Greece and some other existing churches and their legal entities has been recognised *ex lege*. Religious communities which do not wish to seek the status of "religious legal persons" may obtain a legal status under the general provisions of the Civil Code or operate as unions of persons.

[64.] In **Finland**, the Patents and Registration Office is responsible for registration of religious communities assisted by the Ministry of Education and Culture which has created a committee of experts, whose duties are regulated by the Religious Freedom Act. The Committee is composed of three members, who are experts respectively on religions, societal matters and legal matters. The secretary and presenting official of the committee is an official designated by the Ministry of Education and Culture. Both the fact that the bylaws of the communities registered with the Patents and Registration Office are publicly available to anyone and the explicit statutory right to resign from the communities contribute to the legal protection of their members. Registered religious communities are entitled to apply for government transfers for their activities. The amount of the operational subsidies granted to them is based on the number of their members. Such communities may also apply for subsidies for construction projects.

[65.] In **Spain**, the Additional Provision 17 of the 2013 Law on Rationalization and Sustainability of Local Government refers to the need to obtain a certificate of the Religious Entities Registry for opening of public worship places and for their public recognition, which will mention the place where the worship place will be built. This is, on the one hand, to avoid that local entities give unjustified rejections to requests for permission to establish a worship place, and, on the other, to ensure that the worship place will have all the benefits implied in its religious status. Moreover, the future regulation on Religious Entities Registry (expected for summer 2015) will contain the principles set by the Joint Guidelines on Legal Personality of Religious or Belief Communities, prepared by OSCE/ODIHR in consultation with the Venice Commission. Inscription in this Registry is essential for the acquisition of legal personality as religious associations (religious movements can adopt any form, but they will be not recognised as such until registration), and allows many benefits towards self-organisation, such as criminal protection, collective procedures protection, tax benefits, administrative situations, etc.

Assessment of religious movements (sects) / *Évaluation des mouvements religieux (sectes)*

[66.] In **Serbia**, the Constitutional Court may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of the child, right to personal and family integrity, public safety and order, or if it incites religious, national or racial intolerance.

[67.] En **Belgique,** la loi du 2 juin 1998 a institué un Centre d'information et d'avis sur les organisations sectaires nuisibles et d'une cellule administrative de coordination de la lutte contre les organisations sectaires nuisibles.

[68.] In **Finland**, an association, which provides support to victims of religions, has initiated public discussion on phenomena that are problematic from the perspective of the freedom of religion. Its volunteers also offer peer support to individuals whose human rights have been violated by religious communities. For its activities it receives public support from Finland's Slot Machine Association.

[69.] According to the **Polish** Act on guarantees for freedom of conscience and denomination, influence on other persons by research or psychological experiments does not fall under the notion of performance of religious functions.

Property (including issues related to places of worship, cemeteries etc.) / *Propriété (y compris les questions relatives aux lieux de culte, aux cimetières, etc.)*

[70.] In **Greece**, a joint circular clarifies and provides guidance on the implementation of the legislation on the granting of a permit to establish and operate places of worship of religious communities other than the Orthodox Church. The circular, while fully respecting the right of persons belonging to a religious community to practice freely and without any impediment their religion, aims at ensuring through appropriate regulations both the safety and protection of those gathering in the

place of worship and the safety and quality of life of those living nearby, thus safeguarding and promoting social peace and mutual understanding.

[71.] In **Italy**, the State Council reaffirmed in November 2010 that the right to worship must be exercised in accordance with the rules drawn up by the planning regulations that explicitly seeks to balance the different possible use of the land. The construction of places of worship is subject to the issuance of a building permit; for this purpose it is necessary that the building is designed to be built in an area designated by the urban planning for the construction of places of worship. The possibility for all religious denominations (without any distinction between the Catholic faith, the non-Catholic ones or those faith with which a treaty has not been concluded) to be recognised by the municipalities as beneficiaries of areas devoted to worship, has also been reaffirmed by the Constitutional Court more than once. The court, in particular, has declared the constitutional illegitimacy of regional provisions that limited the exercise of worship (and thus also the construction of buildings allocated to it) for denominations that have signed a treaty with the State.

[72.] In **Spain,** the situation of worship places is constantly followed via the voluntarily collection of data in the Religious Entity Register by the Spanish Observatory of Religious Freedom, which reports on its evolution, except in respect of the Catholic Church which has its own directory. In order to strengthen and improve the possibility of burials according to Islamic, Israelite and other confessions a joint working group (communities, Federation of Municipalities and an number of relevant ministries) has been set up under the Advisory Committee on Religious Freedom. For example, in 2015, an agreement was signed between one of the main burial enterprises and the Federation of Spanish Buddhist Communities.

Financing and taxation / *Financement et taxation*

Financing / *Financement*

[73.] In **Serbia**, the Directorate for Cooperation with Churches and Religious Communities has its own budget from which, according to the programme methodology, aid shall be provided for registered churches and religious communities. In accordance with the law, churches and religious communities finance their activities with income from their property, endowments, legacies and funds, inheritance, donations and contributions, other non-profit transactions and activities.

[74.] The **Slovak Republic** has established the 'Expert Commission on Solution of Churches and Religious Organisations Financing Issue' consisting of 15 members representing state authorities and churches and religious organisations. The task of this commission is notably to prepare expert papers concerning the creation of an optimal model for churches and religious organisations financed in the Slovak Republic.

[75.] In "**the former Yugoslav Republic of Macedonia**", the financing of a church, religious community or religious group, as well as the expenditure of the financial assets, is in accordance with the legislation applicable to non-profitable organisations and organisations of public interest.

[76.] A judgment in **Sweden** concerned the refusal of a request from the religious community of Jehovah's Witnesses for state funding on the grounds that it did not fulfil the legal requirements of contributing to the fundamental values of society since it called upon its members not to participate in political elections. In the light of the principles of the State's duty of neutrality and impartiality preventing it from evaluating the legitimacy of different religious beliefs, the Highest Administrative Court concluded that, although the right to vote in fair and free elections is a fundamental value upon which society is founded, citizens have the right not to participate in elections. Consequently, the court held that the government had no legal basis for denying Jehovah's Witnesses state funding.

Taxation

[77.] In **Poland,** legal persons of churches and other religious organisations are exempted from taxation on their income stemming from non-commercial activity. In this regard, they are not obliged to keep documentation required by tax regulations. The income from commercial activity of legal persons of churches and other religious organisations and of companies in which these persons are sole shareholders, is exempted from taxation to the extent in which this income has been designated to such goals as *inter alia* cult, education and upbringing, scientific or cultural goals, charity, preservation of monuments or sacral investments. The law also envisages other tax exemptions, *e.g.* on immovable property of such legal persons, and also some customs exemptions. Donations for the purpose of religious cult give the basis to tax credits applicable under the laws on income tax of natural persons and legal persons respectively.

[78.] The **Serbian** law prescribes that with respect to undertaking business activities and providing income, churches and religious communities may be entirely or partially exempted from tax and other obligations. The law also prescribes that natural and legal persons that have given a contribution or donation to a church or religious community may be exempt from respective tax obligations.

[79.] In accordance with the **Ukrainian** Tax Code, non-profit institutions and organisations include registered religious organisations. Profits of non-profit organisations such as money or property received free of charge or at a non-repayable financial assistance or donations or any other income from religious services as well as passive income are exempted from tax. In accordance with the Tax Code religious organisations whose statutes (regulations) are registered in accordance with the law are exempted from land tax, in cases of the construction and maintenance of religious and other buildings necessary for their activities.

[80.] In **Spain,** the main confessions duly registered obtain certain fiscal benefits, in particular as non-profit organisations, as provided in agreements and in accordance with tax regulations. From the patronage perspective, tax benefits are established for donations to non-profit associations declared of public utility, NGOs and religious organisations duly recognized (Law 49/2002).

C. Protection of individuals on account of their thought, conscience and religion / *La protection des personnes en raison de leur pensée, conscience et religion*

Protection of persons belonging to minority religious groups / *Protection des personnes appartenant à des groupes religieux minoritaires*

Legislation and institutional frameworks / *Législation et cadres institutionnels*

[81.] Amendments to the **Slovak** Anti-discrimination Act of 2013 extend the definition of indirect discrimination to also cover threat of discrimination. At the same time, the definition of the affirmative action was modified to expressly include the elimination of disadvantages resulting from discrimination based on racial and ethnic origin, or affiliation with a national minority or ethnic group.

[82.] The **United Kingdom** Equality Act 2010 provides protection on the basis of a number of protected characteristics, including religion/belief and race. It codified and replaced previous complex and numerous acts and regulations which formed the basis of anti-discrimination law with a single Act making the law easier to understand and strengthening protection in some situations. The Act requires equal treatment in access to employment as well as private and public services, regardless of the protected characteristics, including race religion or belief.

[83.] In "**the former Yugoslav Republic of Macedonia**", the 2010 Law on the Prevention of and Protection against Discrimination makes legal protection much more accessible, especially by

providing for the establishment of a Commission for Protection against Discrimination, and by setting forth a special court procedure in this regard. Furthermore a number of trainings/campaigns have been organised by various stakeholders aim at raising the public awareness about the non-discrimination principle.

[84.] Since 2008, **Finland** has had a national system for monitoring discrimination based on *e.g.* opinion, belief and religion. It also created the *Discrimination Monitoring Group*, consisting of representatives of different authorities, research institutes, advisory boards, the Sámi Parliament, the labour market parties, and umbrella organisations for groups vulnerable to discrimination. One of the actors represented in the Group is the Finnish Islamic Council. In 2012, the Ministry of Employment and the Economy published a research report conducted by the University of Helsinki on work discrimination in the Finnish labour market.

Policies / *Politiques*

[85.] The Council of Ministers of **Poland** adopted the National Programme of Action for Equal Treatment for 2013-2016 which constitutes a horizontal governmental strategy for equal treatment in all sectors of the society (*i.e.* anti-discrimination policy, labour market and social security, counteracting violence, education, health care, access to goods and services). It sets concrete goals and priority actions for equal treatment and measures of preventing discrimination on the grounds of *inter alia* religion and belief.

[86.] In **Spain**, one of the main key tools of the "Plan Estratégico de Ciudadanía e Integración" is the Integral Strategy against Racism, Racial discrimination, Xenophobia and connected forms of intolerance, approved by the *Consejo de Ministros* in 2011, to coordinate the actions of public authorities and civil society in response to the challenges posed by racist attitudes and manifestations, by (i) upgrading relevant statistic institutional information systems, (ii) strengthening cooperation networks between institutions and entities, and (iii) the design and implementation of prevention programmes directed at especially vulnerable groups. Spain has also developed an Action Plan 2012-2020 for Development of its Gypsy Population.

Surveys, awareness-raising and training */ Enquêtes, sensibilisation et formation*

[87.] Since 2011, the **Greek** Government, with the cooperation of all competent ministries, every year cedes for free the use of two housed places in the Peace and Friendship Stadium and the Olympic Sports Centre (the most important sports venues of the capital) as well as many other smaller facilities in municipalities all over the country during the celebration of Ramadan (Eid al-Fitr) and the Feast of Sacrifice (Eid al-Adha) for Muslims wishing to participate. Furthermore, the Ministry of Education and Religious Affairs, in cooperation with the Jewish Museum of Greece, organises in various cities training seminars for teachers on teaching the Holocaust. Moreover, the Police has published and distributed to all members of the police personnel a "Guide of conduct of the Hellenic Police towards religious and vulnerable social groups" giving clear instructions to police officers on the treatment of persons belonging to different religious groups (Muslims, Jews, Hinduists, Sikhs and Buddhists) in the discharge of their functions (in particular identity checks, apprehensions, arrests, detention).

[88.] In **Spain,** a seminar entitled "Police in front of problems of racism, xenophobia and discrimination of minorities in multi-ethnic societies" was organised in the National Police Academy of Ávila. The Sociologic Investigations Centre, financed by the Ministry of Work and Immigration, produced periodical reports, within the framework of a national survey, which incorporate parameters to monitor the evolution of racist or xenophobic attitudes in the Spanish society. The data obtained was used for the publication of a "Report of the evolution of racism and xenophobia in Spain" (2008-2011), allowing to draw in perspective the evolution of attitudes toward immigration. Also periodically, the National Health Survey by the National Statistics Institute includes questions about impressions on discrimination in certain situations, its causes and frequency, and the European Health Survey also analyses certain features on discrimination in workplaces.

[89.] In **Poland**, the Museum of the History of Polish Jews was inaugurated in 2014, which not only preserves the rich heritage of the Polish Jews, but also conducts numerous initiatives to foster dialogue and mutual understanding. Since 2003 the Polish-Israeli programme of meetings of young people "Preserve the memory. The history and culture of two nations" is implemented by the Centre for Education Development in Warsaw (in-service teacher training centre working under auspices of the Polish Ministry of National Education*)* and Yad Vashem Institute in Jerusalem. This programme, in which about 20,000 pupils and 550 teachers from more than 450 schools from Poland and Israel have participated by 2014, has enabled to create platforms for dialogue and cooperation and deepen mutual awareness of the centuries-old history and traditions. In 2010-2012 Poland implemented the Project "Education facing the challenges of migration" aimed at schools with migrant pupils, decision-makers and educational institutions. The project also looked at new working methods for integration of immigrants in the local communities.

[90.] In 2000, **Italy** adopted a yearly "Day of Memory" which is on 27 January, date of the dismantlement of the gates of Auschwitz. In 2003 the National Museum of Italian Hebraism and the Shoah was established in the municipality of Ferrara. In 2005 a grant was approved for the conservation and restoration of the cultural, architectural, artistic and archival Jewish patrimony in Italy.

[91.] In 2013-2014, the **Estonian** Ministry of the Interior organised training for the spiritual leaders and board members of the religious communities concerning the participation in civic society. At the same time, the Academy of Security Sciences organised training for police officers in all prefectures of the Police and Border Guard Board on the main theme of religious and cultural aspects to be taken into account with regard to the principles of freedom of thought, conscience and religion.

[92.] En **Belgique** francophone, différents projets sont menés permettant de mieux « vivre ensemble », comme le Programme d'Education à la Citoyenneté du Centre communautaire et laïc juif « La haine, je dis non ! » destiné aux enseignements primaire, secondaire et au monde associatif, ainsi que le projet de la Commission Justice et Paix Belgique francophone «Conflits inter-convictionnels à l'école : des opportunités pour découvrir l'Autre ? ».

[93.] In 2011, **Austria** launched a project entitled "Together for Austria" with the goal of motivating young people and breaking down prejudice against immigrants and thus preventing tendencies of discrimination.

[94.] Au **Portugal,** la Pastorale des Gitans avec l'Eglise, possède un bulletin informatif trimestriel sur internet, "Caravana" qui informe sur les différents événements en Europe, par exemple un atelier promu par un centre hospitalier sur l'ethnie Gitane/Rom destiné aux cadres de l'hôpital ainsi que diverses nouvelles, nommément relatives à l'éducation des enfants Gitans/Roms.

Hate speech and hate crime on grounds of thought, conscience and religion / *Discours de haine et crimes de haine fondés sur la pensée, la conscience et la religion*

Legislative framework / *Cadre législatif*

[95.] The **Spanish** Criminal Code has been modified to punish any attitude that may encourage, promote or incite directly or indirectly to hatred, hostility, discrimination or violence; or any actions that harm the dignity, by implying humiliation, disrespect or discredit, of a group, a part of it or against an individual for being part of it, or committed by racist, anti-Semitic, or any other discriminatory reasons referring *inter alia* to the victim's ideology, religion or beliefs, belonging to any ethnic, race or nation. The modifications will allow autonomous prosecution for acts of producing, processing or possessing of hate materials in order to distribute and provide access to third parties through its distribution, or sale, either glorifying or justifying these crimes by means of public expression, aggravating punishment when the broadcasting of the material is made by social media,

internet or information technologies that make the fact accessible to a large number of people. The spreading of ideas to justify genocide is now also covered by the law. The judges will be able to arrange for the destruction, deleting or disabling of books, archives, documents or items that contain the hate crime or by which it would have been committed. In the case of distribution of the contents referred to by an internet web or information society services, the judge will be able to block the access or disrupt the service. The modifications also aim at increasing sentences when the facts are committed by organised groups. In case of legal persons as promoters of hate crimes, they will be sentenced as well with important fines and depending on the gravity of the case, the dissolution of the legal person, the suspension of its activities or the closure of its premises and facilities for a period not exceeding five years. According to the Criminal Proceedings Code the use of class actions in complaints is allowed so that every citizen is able to denounce and appear as a party in cases concerning hate crimes - a procedure often applied by NGOs and community movements.

[96.] Also the **Turkish** Criminal Code was amended to refer to 'hatred and discrimination' and to increase the penalty for hate offences including those based on political view, philosophical belief, religion or sect.

[97.] In the **Slovak Republic**, the Criminal Code establishes an act entitled "Restriction of Freedom of Conviction" which covers cases in which a person by violence, threat of violence or other serious harm forces another to participate in a religious act, or cases in which a person without lawful authority prevents another from participation in a religious act or without lawful authority prevents another from the enjoyment of his or her freedom of belief.

[98.] In **Greece**, the Criminal Code, introduced by Article 10 of the new anti-racism law from 2014, increases the minimum penalty of confinement in a penitentiary or imprisonment and doubles the monetary penalties that may be imposed for racist crimes, i.e. for crimes committed out of hatred on the grounds of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability of the victim. It also provides that the sentence imposed may not be suspended.

[99.] The **Finnish** Criminal Code criminalises ethnic agitation and aggravated ethnic agitation committed *inter alia* by threatening, defaming or insulting a certain group on the basis of its religion or belief or on a comparable basis. Genocide committed by destroying a national, ethnic, racial or religious group or another comparable group entirely or partially by the means listed in the Code is also punishable. The Code criminalises crime against humanity, which refers *inter alia* to persecution on the basis of religion as part of a broad or systematic assault on civilian population. Other punishable religion-related offences include breach of the sanctity of religion, prevention of worship, discrimination based on *e.g.* religion, and work discrimination. The Criminal Code lists the grounds for increasing punishments, including the commission of the offence for a motive based on religion or belief.

[100.] According to the **Croatian** Criminal Code, hate crime includes criminal offences committed on account of a person's race, colour, religion, national or ethnic origin. 'Hate motive' is defined as either aggravating or qualifying circumstance of the criminal act, with a more severe prescribed sanction. These include the offence of female gentile mutilation, bodily injury, serious bodily injury, aggravated assault, serious criminal offence against sexual freedom and provoking riots. A Working Group for Monitoring of Hate Crime, composed of a wide range of key stakeholders, has been established by the Office for Human Rights to analyse the implementation of anti-discrimination legislation in relation to hate crime.

[101.] The **Italian** legal system includes specific provisions to combat racist and xenophobic speech, including actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. As for the use of racist or xenophobic language in politics, it is laid down by law that the judicial authorities are entrusted to verify the existence of criminal contents in documents, speeches and programmes made by political representatives.

[102.] In "**the former Yugoslav Republic of Macedonia**", under the amendments to the Criminal Code, adopted in 2009, dissemination of racist and xenophobic material through computer systems is sanctioned. When meting out the sentence the court shall particularly take into consideration if the crime was committed against a person or group of persons or property, directly or indirectly, due to his/her or their sex, race, skin colour, gender, belonging to marginalized group, ethnic origin, language, citizenship, social origin, religion or confession, other types of belief, political affiliation, etc.

[103.] Au **Portugal,** l'article 240 du Code Pénal se réfère notamment aux crimes de haine, couvrant le spectre de la discrimination raciale, religieuse ou sexuelle. Cet article traite de la constitution et de la participation à des associations d'incitation à la discrimination, à la pratique de tout acte de provocation, de diffamation, d'injures et de menaces envers une personne ou un groupe de personnes en raison de la race, de la couleur, de l'origine ethnique ou nationale, de la religion, du sexe, de l'orientation sexuelle ou de l'identité de genre. Les peines vont de un à huit ans en ce qui concerne la constitution d'associations, et de un à six ans en ce qui concerne les actes individuels de discrimination et de violence. L'article 251 du Code pénal traite, quant à lui, de l'outrage au motif de la foi religieuse, indiquant que quiconque offense publiquement une autre personne ou en fait l'objet de moqueries en raison de sa foi ou de sa fonction religieuse, de sorte à perturber l'ordre public, est passible d'une peine allant jusqu'à un an de prison ou à une amende.

Policies / *Politiques*

[104.] In 2011, the **Croatian** Government adopted a Protocol on Acting on Hate Crime which mandates the Office for Human Rights and Rights of National Minorities with the tasks of collecting and publishing data on hate crimes as well as cooperation with civil society and international organisations. The Protocol has also developed a form of statistical monitoring of criminal and misdemeanour offences in relation to hate crime which includes data collected by the Ministry of Interior, State Attorney's Office and by Ministry of Justice. Through these tables it is possible to follow a case from the moment it is identified as a hate crime until the issuing of the judgment.

[105.] The **Slovak Republic** elaborated the 'Concept of Combating Extremism for 2011-2014' with the aim of creating an effective system of measures and activities focused on the protection of citizens and society against anti-social actions of individuals or groups engaging in extremism. For this purpose a Department on Combating Extremism and Spectator Violence was established at the Presidium of the Police Force of the Ministry of Interior.

[106.] The **United Kingdom** established a cross government Hate Crime Programme which includes the creation of a standing Independent Advisory Group composed of victims, advocates and academics. In 2012, "Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime" was published, and in 2014 it was updated with a summary of action taken to date. A key part of the police response to hate crime is the True Vision web facility. The website provides information to victims and professionals, it hosts a library of free resources that can be deployed locally and it also allows for victims to report hate crime online, directly to the relevant police authority. The website is supported by social media resources and a mobile phone 'App' to increase the number of people who can access the services.

Institutional structures, awareness-raising and training / *Structures institutionnelles, sensibilisation et formation*

[107.] In **Ireland**, the Garda (Irish Police) Racial Intercultural and Diversity Office has responsibility for coordinating, monitoring and advising on all aspects of policing diverse communities and this Office monitors the reporting and recording of hate and racist crime on a continual basis. It also supports the work of Garda Ethnic Liaison Officers who are in place throughout the country and works with minority communities at local level. These Liaison Officers work in partnership with minority groups and representative organisations to encourage tolerance, respect and understanding and to help

prevent hate and racist crime. Statistics on racist incidents and information on where to go to report a racist incident continue to be made available on the website of the Office for the Promotion of Migrant Integration of the Department of Justice and Equality.

[108.] In **Finland**, an annual hate crime study reports all hate crime known to the police based on *inter alia* ethnic origin, religion or belief, and expression. A specific area is selected annually for study with the publishing of the information on a website (statistics, research, reports etc.). Furthermore, a report on discrimination is prepared every fourth year. The key structure for the monitoring of discrimination is the Discrimination Monitoring Group, consisting of representatives of different authorities, research institutes, advisory boards, the Sámi Parliament, the labour market parties, and umbrella organisations for groups vulnerable to discrimination. One of the actors represented in the Group is the Finnish Islamic Council.

[109.] In **Spain**, the Supreme Court Prosecutor for criminal procedures on principles of equality and non-discrimination was created in 2011 to offer an institutional response to discrimination phenomena. At territorial level, Special Prosecutors on Hate and Discrimination have been created in every province. Spain has also created a Special Prosecutor on Cybercrime in every prosecutor office, as well as cybercrime specialised police groups (both in police and civil guard) at central and at peripheral levels.

[110.] In **Italy,** the National Office Against Racial Discriminations (UNAR) at the Presidency of the Council of Ministers is entrusted with the promotion of equality and the removal of discriminations. UNAR has enhanced its tools through an integrated action in support of victims and through a Memorandum of Understanding with the Observatory for the Security against Discriminatory Acts (OSCAD), to which it transmits reports on hate-related crimes. Initiatives and actions include awareness-raising campaigns, in particular during the "national week against violence framework", as well as capacity-building, monitoring and data collection exercises. In 2013, OSCAD signed a Memorandum of Understanding with ODIHR for the implementation of the TAHCLE Programme (Training Against Hate Crimes for Law Enforcement). UNAR also participates in the Council of Europe campaign, entitled "No hate speech". It is the intention to promote an integrated awareness-raising campaign involving Italian representatives of Facebook, Youtube, and Twitter. In 2014 the President of the Communications Regulatory Authority sent a letter to all private and public, national and local TV/radio stations, in which he drew attention to the risks of such messages disseminated through means of information. He stated that, within the sphere of his own competences, he will regularly carry out monitoring activities concerning the radio/TV broadcasting system by urging broadcasters to guarantee the respect for the fundamental principles enshrined in current legislation.

[111.] In **Poland,** the Team for Human Rights Protection acting within the Ministry of the Interior is tasked to monitor hate incidents and crimes. Furthermore, one or two district prosecution offices have been selected in each prosecution region as responsible for conducting investigations into hate crimes. Two specialised prosecutors have been appointed in these offices who receive targeted training. They also arrange educational and awareness-raising activities addressed to young people, the police and other prosecutors. The Prosecutor General and the appellate prosecution offices follow closely the developments relating to the proceedings into hate crimes with two reports being prepared each year on this topic. The Prosecutor General issued two sets of Guidelines for prosecutors: one on the conduct of proceedings in cases of hate crimes, and another on matters related to hate crimes committed using Internet. At the same time, the Law Enforcement Officers Programme on combating hate crimes is implemented in the Police in cooperation with the ODIHR/OSCE and involving NGOs. In 2013, a practical guidebook "Human being in the first place" on anti-discriminatory actions in the Police units was made available for Police officers with guidelines of appropriate conduct for the Police officials during their contacts with representatives of various minority groups, in full compliance with the equal treatment standards. It also indicates examples of the most frequent cases of hatred, intolerance or discrimination and informs about possible partners (public institutions and NGOs) with whom Police officers could cooperate in solving concrete problems.

Matters relating to international protection on grounds of thought, conscience and religion /
Questions concernant la protection internationale pour des raisons de pensée, conscience et religion

[112.] **Finland** undertook a study to determine how to coherently integrate freedom of religion into Finnish foreign policy, and it compiled a set of recommendations for further action. The report recommended, for example, that crisis management and conflict prevention should incorporate, *inter alia*, knowledge of the religious terrain of the target country and respect for it when conducting operations and awareness of connections between religion and politics. Human rights violations committed in the name of religion should be prevented, and incidents where the nature of conflict is concealed under a religious guise should be identified.

[113.] The **Italian** Consolidated Text on Immigration includes the possibility of asking for a permit to stay for religious reasons. In the **Slovak Republic** asylum may be granted to an applicant who in his or her country of origin has well-founded concerns about persecution on racial, national or religious grounds, or for the reason of advocating political opinions or affiliation to a social group.

*** * ***