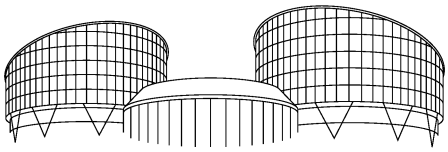

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Minority rights

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Table of contents

Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to minority rights. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

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

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

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

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

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

Introduction

1. Although only a few provisions of the Convention and its Protocols - Article 14 of the Convention and Article 1 of Protocol No. 12 on the prohibition of discrimination - explicitly refer to the term "minority", in particular "national minority",[1] in practice almost all Articles of the Convention or its Protocols are relevant to the rights of the minorities. Minority rights issues, given the specific nature of group identity and the particular context for relying on these rights, are cross-cutting.

2. Neither the Convention nor its Protocols define what constitutes a "minority". Furthermore, minority is not defined in the Court's case-law and, indeed, the Court notes that the notion of "national minority" is not defined in any international treaty. The same applies to the Council of Europe Framework Convention for the Protection of National Minorities ("Framework Convention"), which entered into force on 1 February 1998, as there is no general definition agreed upon by all Member States.[2] In this regard, the Court relies on domestic law, as several Member States set out their own definition of a "national minority" when they ratified the Framework Convention.

3. The Court has examined cases concerning the rights of minorities, not only with reference to the Framework Convention, but also to its Explanatory Report to the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages as well as the reports by the European Commission for Democracy through Law (the Venice Commission) as well as recommendations and reports of the European Commission against Racism and Intolerance (ECRI).

4. This Guide is intended to serve as a case-law reference tool for cases related to the rights of minorities, exclusively focusing on national and ethnic minorities, as well as linguistic and religious minorities and indigenous people.[3] It is thus conceived as an entry point to the Court's case-law on minorities' rights, and not as an exhaustive overview. This Guide covers issues related to the right to self-identification, cultural, religious, language rights, right to education, property, electoral rights, freedom of assembly and association as well as certain thematical issues such as hate-motivated violence, hate speech and stigmatisation, racial profiling, housing, begging and immigration.[4]

[1] For further information, see the Guide on Article 14 and on Article 1 of Protocol No. 12 – Prohibition of discrimination.

[2] *Gorzelik and Others v. Poland* [GC], 2004, § 46 and §§ 67-71. In this connection, it is also important to note that the Parliamentary Assembly of the Council of Europe ("PACE") has suggested a definition for ''national minority'' in its Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights, on 1 February 1993, although it was never adopted.

[3] The rights of LGBTI persons, or of other groups which are also considered as minorities, are not within the scope of this Guide. For further information see, for instance, the Guide on the Rights of LGBTI persons.

[4] For further details see the Key Theme on Articles 8, 13 and 14 – Protection against hate speech, the Key Theme on Article 10 – Hate speech, and the Key Theme on Article 2 Protocol No. 1 – Discrimination in access to education.

I. Hate motivated violence[5]

Article 2 of the Convention – Right to life

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3 of the Convention – Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

5. Racial violence is considered to be a particular affront to human dignity and, in view of its dangerous consequences, requires special vigilance and a vigorous reaction from the authorities. It is for this reason that the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat, but as a source of its enrichment (*Nachova and Others v. Bulgaria* [GC], 2005, § 145).

6. The Court has examined complaints concerning hate crimes mainly under Article 14 of the Convention taken in conjunction with Articles 2 or 3, but also as an aspect of the procedural obligations flowing from Articles 2 or 3 of the Convention. Owing to the interplay between Article 14 and these substantive provisions, issues of discriminatory violence may fall to be examined under only one of the two provisions, with no separate issue arising under the other, or may require examination under both Articles. This question is usually decided by the Court in each case depending on the facts and the nature of the allegations made (*Nachova and Others v. Bulgaria* [GC], 2005, § 161; *Bekos and Koutropoulos v. Greece*, 2005, §§ 70-71; *Abdu v. Bulgaria*, 2014, § 46; *B.S. v. Spain*, 2012, §§ 68-69).

[5] For more detailed information, see also the Guide on Article 2 – Right to life, the Guide on Article 3 – Prohibition of torture and the Guide on Article 14 and on Article 1 of Protocol No. 12 – Prohibition of discrimination.

A. Substantive aspect

7. When presented with a complaint of a violation of Article 14 because of alleged violence perpetrated by a State official, meaning that persons in relevantly similar situations might have been, without an objective and reasonable justification, treated differently, the Court's task under the substantive limb of Articles 2 or 3 is to establish whether or not discriminatory attitudes towards the group to which the victim belongs, or allegedly belongs, was a causal factor in the impugned conduct of the authorities (*Nachova and Others v. Bulgaria* [GC], 2005, § 146; *Stoica v. Romania*, 2008, § 118; *Antayev and Others v. Russia*, 2014, § 123).

8. Although the Court has often found violations of Articles 2 or 3 in their procedural aspect in cases where the applicants had alleged that discriminatory motivations were behind the attacks they suffered by State agents, it has found a breach of the substantive aspect of these Articles in far fewer cases (*Stoica v. Romania*, 2008; *Antayev and Others v. Russia*, 2014). In *Stoica v. Romania*, 2008, concerning racially motivated ill-treatment of a Roma minor by a police officer, the Court found a breach of the substantive aspect of Article 3 taken in conjunction with Article 14. Being satisfied that a prima facie case of racially biased ill-treatment had been made by the applicants, the Court shifted the burden of proof to the Government. As neither the prosecutor in charge of the criminal investigation nor the Government could explain how the incidents could have been racially neutral, the Court found a violation of Article 14 read in conjunction with the substantive aspect of Article 3 (§§ 125-132; similarly, see also *Antayev and Others v. Russia*, 2014, §§ 127-129, concerning the ill-treatment of Chechen suspects on the grounds of their ethnic origin; compare *M.B. and Others v. Slovakia (no. 2)*, 2023, § 91, where the burden of proof was not shifted).

9. On the other hand, in *Nachova and Others v. Bulgaria* [GC], 2005, concerning the deaths of two fugitives of Roma origin when a military police officer was attempting to arrest them, the Court did not find a violation of Article 14 of the Convention taken in conjunction with Article 2 (§ 159). In examining whether the two killings had been racially motivated, the Court observed that the military officers had carried their automatic rifles in accordance with the relevant domestic regulations which, regrettably, did not prohibit their use in the circumstances in issue and had been instructed to use all means necessary to effect the arrest. Accordingly, the possibility that the military police officer who had shot the two Roma fugitives was simply adhering strictly to the regulations and would have acted as he did in any similar context, regardless of the ethnicity of the fugitives, could not therefore be excluded (§ 150). For similar purposes, in *Adzhigitova and Others v. Russia*, 2021, concerning the searches and abductions of Avars (a Caucasian minority ethnic group originating from the Russian territories of Dagestan) by military servicemen of Chechen origin, the Court did not find a violation of Article 14 read in conjunction with Articles 2 and 8 of the Convention. The Court observed that the impugned military operation had been conducted in a blanket, indiscriminate manner, not targeting the Avar community, but individual people. Accordingly, it could not be established that racial prejudice had been the causal factor behind the actions of the military (§§ 269-272; see, in contrast, §§ 273-274 for the Court's conclusions in this case with regards to the detention and ill-treatment of Avars under Article 14 read in conjunction with Article 3).

10. With regard to Article 3, the Convention organs have accepted that discrimination based on race could, in certain circumstances, of itself amount to "degrading treatment" within the meaning of Article 3. In any event, discriminatory remarks and racist insults associated with acts of violence are an aggravating factor in the Court's assessment of a given treatment under Article 3 of the Convention (*Abdu v. Bulgaria*, 2014, §§ 38-39, and the references cited therein).

B. Procedural aspect

11. The Court has highlighted the specific requirement for an investigation into an attack with racial overtones to be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see, for Article 2, *Menson v. the United Kingdom* (dec.), 2003; *Gjikondi and Others v. Greece*, 2017, § 118; and, for Article 3, *Antayev and Others v. Russia*, 2014, § 110).

12. Thus, when investigating violent incidents triggered by suspected racist attitudes, the State authorities are required to take all reasonable action to ascertain whether there were racist motives and to establish whether feelings of hatred or prejudices based on a person's ethnic origin played a role in the events. Treating racially motivated violence and brutality on an equal footing with cases lacking any racist overtones would be tantamount to turning a blind eye to the specific nature of acts which are particularly destructive of fundamental human rights (see, for Article 2, *Nachova and Others v. Bulgaria* [GC], 2005, § 160; and, for Article 3, *Abdu v. Bulgaria*, 2014, § 44).

13. Admittedly, proving discriminatory motives may often be difficult in practice. The respondent State's obligation to investigate possible discriminatory overtones to a violent act is an obligation to use best endeavours and is not absolute. The authorities must 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 discrimination through violence (see, for Article 2, *Nachova and Others v. Bulgaria* [GC], 2005, § 160; and, for Article 3, *Bekos and Koutropoulos v. Greece*, 2005, § 69).

14. When it comes to offences committed to the detriment of members of particularly vulnerable groups, vigorous investigation is required. The Court has noted, for instance, that as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority that required special protection (*Balázs v. Hungary*, 2015, § 53).

15. In *Abdu v. Bulgaria*, 2014, the Court found a violation of the procedural aspect of Article 3 (taken alone and in combination with Article 14) on account of the prosecuting authorities' failure to take reasonable steps to investigate plausible evidence pointing to a possible racist motive into a violent assault. In particular, it noted that the authorities had not deemed it necessary to question a witness about any remarks he might have heard during the incident, nor to question the attackers about a possible racist motive for their actions. This is despite the fact that the applicant had claimed from the beginning of the investigation that he had suffered racist insults and that the attackers had been described in the police report as skinheads – a group known for their extremist, racist ideology (§ 49).

16. The Court has examined a number of cases in the context of alleged racially motivated violence under the procedural aspect of Articles 2 or 3 read in conjunction with Article 14, such as:

- *Bekos and Koutropoulos v. Greece*, 2005, §§ 72-75: physical and verbal abuse of two members of the Roma community during police custody (violation of Article 14 taken in conjunction with Article 3);
- *Ognyanova and Choban v. Bulgaria*, 2006, §§ 143-149: death of a suspect of Roma ethnic origin while being held at police station (no violation of Article 14 taken in conjunction with Articles 2 and 3);
- *Šečić v. Croatia*, 2007, §§ 66-70: the racist attack on a member of the Roma by two unidentified men (violation of Article 14 taken in conjunction with Article 3 of the Convention);
- *Angelova and Iliev v. Bulgaria*, 2007, §§ 116-118: unprovoked killing of a man of Roma origin by a group of youths (violation of Article 14 taken in conjunction with Article 2);

- *B.S. v. Spain*, 2012, §§ 70-72: ill-treatment of an African woman working as a prostitute (violation of Article 14 taken in conjunction with Article 3);
- *Adzhigitova and Others v. Russia*, 2021, §§ 275-279: detention and ill-treatment at a local school of Avars by military servicemen of Chechen origin (violation of Article 14 taken in conjunction with Article 3);
- *M.B. and Others v. Slovakia (no. 2)*, 2023, §§ 94-97: alleged ill-treatment of the applicants, minors of Roma ethnicity, by officers at a police station and an ineffective investigation into possible racist motives (violation of Article 14 read in conjunction with Article 3 (procedural)).

17. In *Balázs v. Hungary*, 2015, concerning the insufficient investigation of the acts of violence towards a Roma person by private individuals, the Court found a violation of Article 14 read in conjunction with Article 3 on the basis of a number of combined considerations. Importantly, with regards to the prosecution's insistence on identifying an exclusive racist motive, the Court noted that it is not only acts based solely on a victim's characteristic that can be classified as hate crimes. Perpetrators may have mixed motives, being influenced by situational factors equally or stronger than by their biased attitude towards the group the victim belongs to. Therefore, the Court found it difficult to share the prosecution's concern about proving that the insult was "precisely" due to the applicant being a Roma. In addition, the Court noted that the prosecuting authorities' reluctance to link the perpetrator's posts on social media to the incident despite remarkable concordances and their failure to identify a racist motive in the face of powerful hate crime indicators contained in those posts, resulted from a manifestly unreasonable assessment of the circumstances of the case (§§ 70-76).

18. Moreover, the procedural obligation to investigate concerns not only acts of violence based on a victim's actual or perceived personal status or characteristics, but also acts of violence based on a victim's actual or presumed association or affiliation with another person who actually or presumably possesses a particular status or protected characteristic (as in the case of *Škorjanec v. Croatia*, 2017, § 56, concerning discrimination by association). In *Škorjanec v. Croatia*, 2017, the applicant and her partner of Roma origin were assaulted by two individuals who uttered anti-Roma insults. In finding a violation of Article 3 under its procedural aspect in conjunction with Article 14, the Court noted in particular the prosecuting authorities' insistence on the fact that the applicant herself was not of Roma origin, the failure to identify whether she was perceived by the attackers as being of Roma origin herself, as well as the failure to take into account and establish the link between the racist motive for the attack and the applicant's association with her partner. These had resulted in a deficient assessment of the circumstances of the case which impaired the proper investigation of the allegations of a racially motivated act of violence (§§ 67-72).

19. There have also been certain instances where the Court has examined violence motivated by racial hatred under Article 14 in conjunction with Article 8. The Court found a violation of the Convention in the case of *Burlya and Others v. Ukraine*, 2018, concerning the failure of the police to protect Roma residents from a pre-planned attack on their homes by an anti-Roma mob. Although some of the applicants had been absent from the village at the time of the events and no physical violence was involved, the Court notably took into account the role the authorities played prior to and in the course of the attack on the applicants' homes and their failure to conduct an effective investigation into the attack (§§ 169-171; see also, *R.B. v. Hungary*, 2016, §§ 83-91, concerning the racist abuse and threats directed at a woman of Roma origin during an anti-Roma rally in her village, for an assessment under Article 8 of the procedural obligation to conduct an investigation into bias-motivated verbal violence and intolerance against an ethnic minority).

20. Finally, in *Allouche v. France*, 2024, the applicant complained about antisemitic insults and threats uttered against her by a private individual. The domestic courts acknowledged the antisemitic character of those threats but reclassified the offence into "simple" death threats, and thus did not examine the discriminatory motives behind the threats. The Court concluded that, in doing so, the

domestic authorities had disregarded their positive obligations under Articles 8 and 14 of the Convention, which had consisted of providing the applicant with effective and adequate criminal-law protection against the discriminatory remarks made by the offender.

II. Right to Self-identification

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 to the Convention – General prohibition of discrimination

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

21. Ethnic identity, in particular the right of members of a minority to maintain their identity and to lead a private and family life in accordance with their tradition, falls within the personal sphere protected by Article 8 of the Convention (*Ciubotaru v. Moldova*, 2010, § 49; *Tasev v. North Macedonia*, 2019, § 32).

22. The Court considers that the right to free self-identification is a right of cardinal importance in safeguarding minority groups, including both ethnic and religious minorities. Moreover, the right to free self-identification is not a right specific to the Framework Convention. It is the "cornerstone" of international law on the protection of minorities in general (*Molla Sali v. Greece* [GC], 2018, § 157; *Tasev v. North Macedonia*, 2019, § 33; *Sagir and Others v. Greece*, 2025, § 50).

23. In its positive aspect, the right to free self-identification allows individuals to be recognised as members of a minority, which constitutes a strong presumption in favour of their self-declared identity. Self-identification can especially be expressed through the choice of the name of an association. For example, in *Sagir and Others v. Greece*, 2025, the domestic courts had refused to register the "Cultural Association of Turkish Women of the Prefecture of Xanthi". The Court considered that this restriction did not pursue a "pressing social need"[6]. Nevertheless, the positive aspect of this right is not absolute and may be subject to certain limitations (*Ciubotaru v. Moldova*, no. 27138/04, § 57, 27 April 2010). While the right to free self-identification applies in its positive aspect to people who wish to be treated as members of a minority, the negative aspect of this right implies the right to choose not to be treated as a member of a particular minority. The negative aspect of the right to free self-identification, namely the right to opt out of being regarded as a member of a specific minority,

[6] See below the Chapter on "Freedom of Assembly and Association".

is not limited in the same way as the positive aspect of that right. The Court holds that in this negative aspect, the choice in question is completely free, provided it is informed, and it must be respected both by the other members of the minority in question and by the State itself. This applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of the protection of minorities (*Molla Sali v. Greece* [GC], 2018, § 157; *Tasev v. North Macedonia*, 2019, § 33) [7].

24. In *Molla Sali v. Greece* [GC], 2018, the Court clarified certain principles governing the protection of minorities in respect of the right to self-identification. In this case, the applicant, whose husband was a member of the Muslim community in Thrace, complained about the application of Islamic law to her husband's succession despite the fact that her husband had drawn up a will in accordance with the Greek Civil Code. The Court observed that the applicant, as the beneficiary of a will drafted in accordance with the Civil Code by a testator of Muslim faith, was in a relevantly similar situation to that of a beneficiary of a will made in accordance with the Civil Code by a non-Muslim testator, and was treated differently on the basis of "other status", namely the testator's religion. The Government submitted that the settled case-law of the Court of Cassation pursued the aim of protecting the Thrace Muslim minority. The Court considered it doubtful whether the impugned measure regarding the applicant's inheritance rights had been suited to achieve that aim. The Court held that it could not be assumed that a testator of Muslim faith, having drawn up a will in accordance with the Civil Code, had automatically waived his right, or that of his beneficiaries, not to be discriminated against on the basis of his religion. The State could not take on the role of guarantor of the minority identity of a specific population group to the detriment of the right of that group's members to choose not to belong to it or not to follow its practices and rules. Accordingly, the Court held that refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of the right to free self-identification. Therefore, there had been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 (*Molla Sali v. Greece* [GC], 2018, §§ 141-162).

25. In *Tasev v. North Macedonia*, 2019, domestic authorities refused to change the recording in the electoral role of the ethnicity (from Bulgarian to Macedonian) of the applicant judge who wished to stand as a candidate for higher judicial office. The main reason for the refusal was the timing of the applicant's request, seen within the context of his participation as a candidate (§ 38). The Court found that the authorities' refusal to change the applicant's ethnicity entry in the electoral roll had amounted to an interference with his private life and that the legal basis on which the refusal rested was not foreseeable. Therefore, the interference with the applicant's Article 8 rights was not "in accordance with the law" (§§ 34-41).

26. In *Ciubotaru v. Moldova*, 2010, the Court affirmed that States may demand the existence of objective evidence of a claimed ethnicity. However, whereas authorities should be able to refuse a claim to belong to a particular ethnicity if such a claim is "based on purely subjective and unsubstantiated grounds", the Court held that States must not, through their legal framework, create insurmountable barriers for someone wishing to have recorded an ethnic identity different from that recorded by the authorities. In that case, the applicant's request for his ethnicity to be changed from Moldovan to Romanian was rejected on the grounds that he had failed to show that one of his parents had been recorded as being of Romanian ethnicity in the official records. On the one hand, the Court found that the applicant had been confronted with a legal requirement which had made it impossible for him to adduce any evidence in support of his claim, and thus had represented a disproportionate burden in view of the historical realities of the Republic of Moldova (§ 57). On the other hand, the Court observed that the applicant's claim had been based on more than the subjective perception of his own ethnicity: he had been able to provide objectively verifiable links with the Romanian ethnic

[7] The Court made reference to Article 3 § 1 of the Framework Convention, which provides that: "no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice".

group such as language, name, empathy and others (§ 58). Therefore, in preventing the applicant from having his claim examined and refusing to register an individual's ethnicity as declared by the individual, the State had therefore failed to comply with its positive obligation to secure to the applicant effective respect for his private life (§59).

27. Furthermore, the case of *Kurić and Others v. Slovenia* [GC], 2012, concerned the State's alleged failure to regulate the legal status of the applicants. The applicants belonged to a group of persons known as the "erased", who were removed from the Slovenian register of permanent residents shortly after Slovenia's declaration of independence from the former Socialist Federal Republic of Yugoslavia (SFRY) because they had not opted for Slovenian citizenship – an option that had been briefly available to all former Yugoslav citizens residing in Slovenia at that time. As a result of the "erasure", the applicants, who did not possess any Slovenian identity documents, had been residing illegally in Slovenia for almost 20 years, experiencing insecurity and legal uncertainty. The Grand Chamber noted that the applicants had a private and a family life in Slovenia at the material time within the meaning of Article 8 as they had developed the network of personal, social, cultural, linguistic and economic relations as well as family life in Slovenia. In view of the fact that former citizens of the SFRY with permanent residence in Slovenia before the declaration of independence could not foresee the consequences of their failure to apply for Slovenian citizenship, the Grand Chamber upheld the Chamber's judgment that there had been a violation of Article 8 due to both the applicants' subsequent "erasure" and its consequences, as well as the absence of any notification or personal information to these individuals of the erasure (§§ 339-362). It also pointed out that an alien lawfully residing in a country might wish to continue residing in that country without necessarily acquiring its citizenship (§ 357). In addition, the Grand Chamber also found a violation of Article 14 taken in conjunction with Article 8, on the basis that the erased persons were treated less favourably than those who had the status of "real" aliens who had been living in Slovenia before independence and whose special permanent residence permits remained valid. Under these circumstances, the Court considered that the impugned differential treatment was based on the national origin of the persons concerned and that it did not pursue a legitimate aim and therefore lacked an objective and reasonable justification (§§ 393-396). The regularisation of the status of aliens residing in Croatia following the break-up of the former SFRY was at stake also in *Hoti v. Croatia*, 2018, where a violation of Article 8 of the Convention was found with regards to the impossibility for a stateless migrant, born in Kosovo, to regularise his residence status in Croatia with due regard to his private-life interests (§ 141).

28. Finally, the Court has considered the traditional itinerant lifestyle to be an integral part of identity for Roma (see *Chapman v. the United Kingdom* [GC], 2001, §§ 73 and 96, where the applicant's occupation of her caravan is an integral part of her ethnic identity as a Roma, reflecting the long tradition of that minority of following a travelling lifestyle; see also *Connors v. the United Kingdom*, 2004, § 84; *Hudorovič and Others v. Slovenia*, 2020, § 142; *Hirtu and Others v. France*, 2020, § 70; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 97; *Paketova and Others v. Bulgaria*, 2022, § 161). The Court has further highlighted the States' positive obligation under Article 8 of the Convention to facilitate the traditional way of life of the Roma and to safeguard their rights to maintain their identity to lead their private and family life in accordance with that tradition (*Chapman v. the United Kingdom* [GC], 2001, §§ 73 and 96; *Winterstein and Others v. France*, 2013, § 148; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 112).[8]

[8] See also the sub-chapter "Housing: traditional lifestyle" below.

III. Racial Profiling

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 4 – Freedom of movement

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

29. In the cases of *Basu v. Germany*, 2022, and *Muhammad v. Spain*, 2022, the Court clarified the criteria by which to assess whether an identity check, allegedly based on physical or ethnic motives, falls within the ambit of Article 8, under its "private life" aspect, thus triggering the applicability of Article 14 and of the scope of the procedural obligation in this context. The case of *Basu v. Germany*, 2022, concerned an identity check on the applicant, a German national of Indian origin, carried out by police officers on a train which had just passed the border from the Czech Republic into Germany, whereas the case of *Muhammad v. Spain*, 2022, concerned an identity check of a Pakistani national stopped by the police whilst walking on a street in a tourist area in which pickpocketing was relatively frequent.

30. The Court held that not every identity check of a person belonging to an ethnic minority would fall within the ambit of the right to respect for that person's private life. Such a threshold is only attained if the person concerned has an arguable claim that he or she may have been targeted on account of specific physical or ethnic characteristics. Such an arguable claim may notably exist where the person concerned submitted that he or she (or persons having the same characteristics) had been the only person(s) subjected to a check and where no other grounds for the check were apparent or where any explanations of the officers carrying out the check disclose specific physical or ethnic motives for the check. Having relied on the consequence-based approach established in *Denisov v. Ukraine* [GC], §§ 110-114, the Court further observed in this regard that the public nature of the check may have an effect on a person's reputation and self-respect (*Basu v. Germany*, 2022, §§ 23-25; *Muhammad v. Spain*, 2022, § 50).

31. The Court applied this approach in *Basu v. Germany*, 2022, in assessing how the applicant had substantiated both his racial profiling allegations and the repercussions of the impugned check on his

private life to determine whether the applicant had an arguable claim that he had been targeted on account of specific physical or ethnic characteristics. The applicant submitted that, of the persons present in different compartments of the train carriage, he and his daughter had been the only persons with a dark skin colour and the only persons who had been subjected to the check. Furthermore, the explanations given by the police officer did not disclose any other objective grounds for targeting the applicant. The applicant further argued that the identity check severely impacted his private life, causing him to feel so stigmatised and humiliated that he avoided travelling by train for several months. The Court found that the identity check in question fell within the ambit of Article 8, rendering Article 14 applicable (§§ 26-28). The Court came to a similar conclusion as to the existence of an arguable claim in the Muhammad case, noting that the applicant had been subjected to an identity check by the police in public which, according to his submission, had only been carried out because of his dark skin colour, and had sufficiently affected his psychological integrity and ethnic identity for the purposes of Article 8 (§§ 50-51).

32. In addition, in both these cases the Court clarified the scope of the procedural obligation in the context of racial profiling. It considered that the authorities' duty to investigate the existence of a possible link between racist attitudes and a State agent's act is to be considered as implicit in their responsibilities under Article 14 when examined in conjunction with Article 8. In particular, State authorities have an obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. The authorities must 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 racially induced violence. For an investigation to be effective, the institutions and persons responsible for carrying it out must be independent of those targeted by it. This means not only a lack of any hierarchical or institutional connection, but also practical independence. The Court noted that this was essential for the protection against racial discrimination not to become theoretical and illusory in the context of non-violent acts falling to be examined under Article 8, in order to ensure protection from stigmatisation of the persons concerned and to prevent the spread of xenophobic attitudes (*Basu v. Germany*, 2022, §§ 33-35; *Muhammad v. Spain*, 2022, §§ 65-68).[9]

33. In the case of *Basu v. Germany*, 2022, the Court found that, in view of the hierarchical and institutional connections between the investigating authority and the State agent which had carried out the impugned identity check, the investigations could not be considered independent. Moreover, the domestic courts, despite an arguable claim of racial profiling, had failed to take the necessary evidence and, in particular, to hear the witnesses who had been present during the identity check. They had dismissed the applicant's action on formal grounds, considering that the applicant had not had a legitimate interest in a decision on the lawfulness of his identity check. Accordingly, due to the failure of the State authorities to comply with their duty to take all reasonable measures to ascertain through an independent body whether or not a discriminatory attitude had played a role in the identity check, the Court found a violation of Article 14 taken in conjunction with Article 8 (§§ 36-39). On the other hand, in the Muhammad case, the Court did not find a violation of these provisions, noting in particular that the applicant instituted proceedings due to the allegedly racially discriminatory behaviour of the police, and that the domestic courts had assessed the evidence before

[9] In *Basu v. Germany*, 2022, §§ 33-34, in reaching this conclusion, the Court drew on its case-law on racially induced violence (see Chapter on Hate motivated violence above). In addition, it relied on the findings of the European Commission against Racism and Intolerance (ECRI), which had stressed that, as racial profiling results in the stigmatisation and alienation of the persons concerned by it, it was important to ensure effective investigations into alleged cases of racial discrimination by the police, and the findings of the UN Human Rights Committee, according to which targeting only persons with specific physical or ethnic characteristics in identity checks negatively affects the dignity of the persons concerned and also contributes to the spread of xenophobic attitudes.

them and concluded that no liability could be established. Moreover, the applicant had been able to challenge the domestic courts' decisions, which had been sufficiently reasoned and motivated (§§ 69-76).

34. Furthermore, in the case of *Muhammad v. Spain*, 2022, the Court also examined the complaint concerning the allegedly discriminatory grounds for the police check and arrest (the substantive aspect under Article 14 taken in conjunction with Article 8). The Court found that the applicant's argument, that nobody else belonging to the "majority Caucasian population" had been stopped on the same street immediately before, during or after his identity check, could not be taken as an indication per se of any racial motivation behind the request for him to show his identity document. The applicant had not shown any surrounding circumstances which could have suggested that the police had been carrying out identity checks motivated by animosity against citizens who shared the applicant's ethnicity, or which could give rise to the presumption required to reverse the burden of proof at the domestic level as to the existence of any racial or ethnic profiling. Therefore, there was no reason for the Court to depart from the domestic courts' conclusion that the applicant's attitude, and not his ethnicity, was what had caused the police officers to stop him and to identify him. It was only his refusal to show proof of čhis identity that caused his detention in order to be identified at the police premises. Hence, the Court found no violation of Article 14 read in conjunction with Article 8 of the Convention in this respect (§§ 99-103).

35. In the case of *Wa Baile v. Switzerland*, 2024,which also concerned allegations of racial profiling in an identity check, the Court relied on *Basu v. Germany*, 2022, and *Muhammad v. Spain*, 2022. It considered that the complaint made by a dark-skinned applicant, in regard to an identity check in a railway station with which he had refused to comply with and was accordingly sentenced to a fine could fall within the ambit of the right to respect for private life within the meaning of Article 8 (§ 71). The Court further noted that, unlike in the cases of *Basu v. Germany*, 2022, and *Muhammad v. Spain*, 2022, where the applicants had themselves initiated criminal and administrative proceedings, criminal proceedings in *Wa Baile v. Switzerland*, 2024, had been brought against the applicant. Examining the existence of an arguable claim of discrimination on the ground of his skin colour at the merits stage and taking the view that it had been incumbent on the courts of competent jurisdiction to determine whether or not the check and search had been racially motivated, in particular given the specific circumstances and the location of the identity check, the Court concluded to a violation of Article 14, read in conjunction with Article 8 (§§ 102-103).

36. In the case of *Seydi and Others v. France*, 2025, the six applicants, who described themselves as being of African or North African origin, had their identities checked by the police in a public place, in the street. Five of them were searched once and one of them had been subjected to three checks in ten days. In light of its recent judgments concerning racial profiling (*Basu v. Germany*, 2022, *Muhammad v. Spain*, 2022, *Wa Baile v. Switzerland*, 2024), the Court examined the case from the standpoint of Article 14 in conjunction with Article 8. As to the procedural aspect, the Court considered that the domestic courts' decisions had been particularly reasoned, fulfilling their obligation to investigate whether discriminatory motives could have played a role in the identity checks. The domestic courts had conducted a balanced, objective and comprehensive assessment of the cases before them, and they had considered that the evidence produced was insufficient to establish that they had been victims, in their personal capacity and in the circumstances of time and place alleged, of any discriminatory conduct on the part of the police. As to the substantive limb, the Court noted that the safeguards set out in the domestic legal framework had been strengthened since the events in issue, and considered that the framework applicable at the time of the events had already been compatible with Article 14 in conjunction with Article 8 of the Convention. The Court had then to determine whether the applicants had produced individualised prima facie evidence that they had been treated differently from another individual in an analogous or relevantly similar situation. The Court considered this was the case only for one applicant, who had produced general statistics showing that a certain segment of the population, to which he claimed to belong, was "over-

checked". The Court found that although the applicant had not expressly referred to any comparison group, all the circumstances surrounding his three checks in ten days, taken both together and in conjunction with the official reports and statistics showing cases of racial profiling during identity checks in France, amounted to the coexistence of strong, clear and concordant inferences capable of giving rise to a presumption of discrimination, which the Government had been unable to rebut. There was a violation of the substantive limb of Article 14 in conjunction with Article 8 for one of the applicants.

37. Furthermore, complaints of ethnic profiling were examined in relation to the right to liberty of movement, under Article 2 of Protocol No. 4 in conjunction with Article 14 of the Convention, in *Memedova and Others v. North Macedonia*, 2023. In this case, the applicants, all of Roma ethnicity, were not allowed to leave the territory of the respondent State. They complained that they had been singled out by the border police officers owing to their Roma ethnicity. On the merits, the Court found a presumption of indirect discrimination, noting that the applicants had made a convincing prima facie case of indirect discrimination having regard to how the statutory provisions were applied in practice by the border officers (§§ 94-95). Given the absence of an objective and reasonable justification of the Government for the different treatment to which the applicants had been subjected at the border, the Court concluded that the applicants were discriminated against because of their Roma origin when they were prevented from crossing the State border (§ 99).

IV. Begging

Article 8 of the Convention – Right to respect for private and family life

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 14 of the Convention – Prohibition of discrimination

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

38. The Court has examined cases concerning Roma applicants who have been found guilty of begging. In its assessment, the Court has considered the specific circumstances of each case, particularly taking into account the applicants' vulnerability as well as economic and social situation (*Lacatus v. Switzerland*, 2021, § 57).

39. In *Lacatus v. Switzerland*, 2021, a fine was imposed on the applicant, who belonged to the Roma community, for unintrusive begging on public streets in Geneva and subsequently imprisoned for five days for failure to pay the fine. The applicant complained under Article 8 that the prohibition of begging had interfered with her private life as it had deprived her of her means of subsistence. She also relied on Article 14 of the Convention in conjunction with Article 8 in complaining that she had been the victim of discrimination on the ground of her social status and financial situation, and also on account of being a member of the Roma community since the law targeted the poor and thus contributed to the stigmatisation of particularly vulnerable Roma people. Having emphasised that the human dignity is inherent in the spirit of the Convention, the Court took the view that a person's

dignity is severely compromised if they lack sufficient means of subsistence. By the act of begging, the person concerned adopts a particular way of life with the aim of rising above an inhumane and precarious situation (§ 56). The Court further recognised, however, that aggressive begging can disturb the public and lead to the exploitation of individuals, especially children (§ 97).

40. The Court noted that for the applicant in *Lacatus v. Switzerland*, 2021, begging was a means for her to secure an income and alleviate poverty, and she had not been accused of engaging in aggressive or intrusive forms of begging (§§ 58 and 113). It consequently found that the imposition of a blanket ban on begging and the punishment of the applicant, an extremely vulnerable person, in a situation in which she had in all likelihood lacked any other means of subsistence and had no choice other than to beg in order to survive, had not been proportionate to the aim of protecting the public order (§§ 107-114). Accordingly, the penalty imposed on the applicant had infringed her human dignity and impaired the very essence of the rights protected by Article 8 (§§ 115-117). Having found a violation of Article 8 of the Convention, the Court has not deemed it necessary to give a separate ruling on the complaint under Article 14 in conjunction with Article 8 (§ 123).

41. As opposed to the situation in *Lacatus v. Switzerland*, 2021, where the absolute ban on begging covered the entire Canton of Geneva, in a case concerning Denmark, begging was allowed under certain conditions. In *Dian v. Denmark* (dec.), 2024, the applicant, a Romanian national, was sentenced to twenty days' imprisonment for begging on a pedestrian street. The Court was not convinced that the applicant had lacked sufficient means of subsistence, or that begging had been his only option to ensure his own survival, or that by the act of begging, he had adopted a particular way of life with the aim of rising above an inhumane and precarious situation, and thus of protecting his human dignity. The act of begging had been a means, or at least an additional means, of income for the applicant. The Court, having regard to the applicant's economic and social situation, noted that he received an income from other activities, had travelled multiple times to Romania and regularly sent money to his family there. Thus, it concluded that Article 8 was not applicable and declared the case inadmissible (§§ 44-57).

V. Hate Speech and Stigmatisation[10]

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 10 of the Convention – Freedom of expression

"1. 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

Article 17 of the Convention – Prohibition of abuse of rights

"Nothing in [the] 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."

42. The Court has examined cases concerning hate speech and stigmatisation in the context of Article 8 of the Convention as well as Article 10 of the Convention, the latter sometimes in the light of Article 17 of the Convention.

A. Article 8

43. Cases in this context arise in two ways: direct targeting of individuals and targeting of a group. The Court has found that any negative stereotyping of a group, when it reaches a certain level, is capable of impacting the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. In this sense it can be seen as affecting the private life of members of the group under Article 8 of the Convention (*Aksu v. Turkey* [GC], 2012, § 58).

44. In *Aksu v. Turkey* [GC], 2012, the Court examined a complaint of a Roma living in Turkey who had been aggrieved by passages in an academic book "The Gypsies of Turkey" which allegedly contained language that negatively stereotyped Roma in Türkiye as a group and offended his Roma identity. The Court found that, although the applicant had not been personally targeted, he could have felt offended by the statements concerning the ethnic group to which he belonged and accepted that the applicant could be considered a victim of the facts complained of (§§ 53-54). The Court proceeded to

[10] For more detailed information, see also the Guide on Article 8 – Right to respect for private and family life, home and correspondence, the Guide on Article 10 – Freedom of expression, the Key Theme on Articles 8, 13 and 14 – Protection against hate speech and the Key Theme on Article 10 – Hate speech.

examine whether the Turkish courts had struck a fair balance between the applicant's rights under Article 8 of the Convention as a member of the Roma community and the freedom of the author of the book in issue to carry out academic/scientific research on a specific ethnic group and publish his findings (§ 69). On the merits, however, the Court did not find a violation of Article 8 in this case observing, among others, that while the author of the book had pointed to certain illegal activities on the part of some Roma living in particular areas, nowhere in the book had he made negative remarks about the Roma in general or claimed that all Roma engaged in illegal activities. In addition, the Court noted that the author had emphasised, in clear terms that his intention was to shed light on the unknown world of the Roma community in Turkey, which had been ostracised and targeted by vilifying remarks based mainly on prejudice (§ 70).

45. In *Lewit v. Austria*, 2019, an Austrian national of Jewish ethnic origin who was one of the last living survivors of the Mauthausen concentration camp had been aggrieved by an article in a right-wing periodical which had asserted that people freed from the camp in 1945 had engaged in robbing, plundering and killing, and had further called them a "plague for the people". The applicant's claim for damages had been dismissed on the basis that he had not been personally affected by the article. With reference to the principles established in the case of Aksu v. Turkey, the Court found that the last living survivors of the Mauthausen camp could be seen as a "(heterogeneous) social group", in view of the applicants' allegations that they had all been victims of the National Socialist regime, and had all been imprisoned because of their origins, their beliefs or their faith, and that Article 8 of the Convention applied because the facts underlying the case fell within the scope of the applicant's "private life", even though the article had not personally named him (§§ 19 and 46-47). The Court held that, due to the lack of a comprehensive examination of the questions of legal standing and the meaning of the statements, the domestic courts failed to examine the core of the applicant's claim of defamation. The failure to conduct a comprehensive assessment as part of their procedural obligation resulted in a violation of Article 8 (§§ 86-87).

46. Moreover, the cases of *Budinova and Chaprazov v. Bulgaria*, 2021, and *Behar and Gutman v. Bulgaria*, 2021, concerned the failure of the State to discharge its positive obligation to protect individuals from hate speech by a journalist and politician in relation to the publication of a number of anti-Roma statements in the former case, and anti-Semitic and Holocaust-denial statements in the latter case.

47. In these cases the Court considerably developed the principle laid down in *Aksu v. Turkey* [GC], 2012, by setting out the relevant considerations by which to assess whether negative public statements about a social group affected the "private life" of an individual member of that group to the point of triggering the application of Article 8 in relation to them. Accordingly, the question of whether a "certain level" (as per *Aksu v. Turkey* [GC]) had been reached could only be decided on the basis of the circumstances of the specific case and, in particular, on the basis of relevant factors, including but not necessarily limited to: (a) the characteristics of the group (for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position vis-à-vis society as a whole), (b) the precise content of the negative statements regarding the group (in particular, the degree to which they could convey a negative stereotype about the group as a whole, and the specific content of that stereotype), and (c) the form and context in which the statements were made, their reach (which may depend on where and how they have been made), the position and status of their author, and the extent to which they could be considered to have affected a core aspect of the group's identity and dignity. The Court clarified that none of these factors invariably takes precedence: it is the interplay of all of them that leads to the ultimate conclusion as to whether the "certain level" (required under *Aksu v. Turkey* [GC]) has been reached, and on whether Article 8 is thus applicable.

48. Lastly, it is the overall context of each case, in particular the social and political climate prevalent at the time when the statements were made, which may also be an important consideration (*Budinova and Chaprazov v. Bulgaria*, 2021, §§ 61-63; *Behar and Gutman v. Bulgaria*, 2021, §§ 65-67). On the

facts of both cases and applying the above criteria, the Court considered that the impugned statements had been capable of having a sufficient impact on the sense of identity of Jews and Roma in Bulgaria, and on their feelings of self-worth and self-confidence, to have reached the "certain level" required, thus affecting the applicants' "private life". In the first place, the Court emphasised that Jews and Roma in Bulgaria could be seen as being in a vulnerable position. Secondly, in both cases, it found that the content of the impugned statements had been virulent and amounted to extreme negative stereotyping meant to vilify those groups and to stir up prejudice and hatred towards them. In the case of *Behar and Gutman v. Bulgaria*, they had rehearsed timeworn anti-Semitic narratives, including the denial of the Holocaust. In the case of *Behar and Gutman v. Bulgaria*, the statements, of a systematic nature, appeared to have been deliberately couched in inflammatory terms, visibly seeking to portray the Roma in Bulgaria as exceptionally prone to crime and depravity. Thirdly, the Court noted that the applicants in both cases had lodged their claims against the politician at precisely the time when his political career had been on the rise and when his utterances had thus been gaining more notoriety. While the most virulent of his statements about Jews had been made in two books which had not been in wide circulation, his vehement anti-Roma stance, constituting a core component of his party's political message, had been repeated on many channels of communication, and thus reached a wide audience. In view of all those factors, which pointed in the same direction and reinforced each other, the Court found that Article 8, and, therefore, Article 14, were applicable (*Budinova and Chaprazov v. Bulgaria*, 2021, §§ 64-69; *Behar and Gutman v. Bulgaria*, 2021, §§ 68-74).

49. On the merits, the Court found in both cases that by refusing to grant the applicants redress in respect of the politician's discriminatory statements, the Bulgarian authorities had failed to comply with their positive obligation to respond adequately to discrimination on account of the applicants' ethnic origin and to secure respect for their "private life" as ethnic Roma and ethnic Jews. In particular, the Court noted the failure to assess the tenor of the politician's statements in an adequate manner and to carry out the requisite balancing exercise. While ascribing considerable weight to the politician's freedom of expression, the authorities had downplayed the capacity of his statements to stigmatise both groups and arouse hatred and prejudice against them. In this connection, the Court reiterated that sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups deserved no or very limited protection under Article 10, read in the light of Article 17. For the Court, this was fully in line with the requirement, stemming from Article 14, to combat racial discrimination. The fact that the author of the impugned statements was a politician or had spoken in his capacity as a member of parliament did not alter that. Therefore, the Court held that there had been a breach of Article 8 of the Convention read in conjunction with Article 14 in both these cases (*Budinova and Chaprazov v. Bulgaria*, 2021, §§ 93-95; *Behar and Gutman v. Bulgaria*, 2021, §§ 104-106).

B. Articles 8 and 9

50. The case *Georgian Muslim Relations and Others v. Georgia*, 2023, concerned the authorities' response to the applicants' being prevented from opening a Muslim boarding school. The applicants were a non-profit association, whose main objective was to foster support for religious education and to provide free education to socially vulnerable children, and seven Georgian nationals belonging to the Muslim minority. Their attempts to open the school were repeatedly blocked by local residents, belonging to the Orthodox Christian population, who behaved violently towards the applicants. The Court accepted that the alleged violent behaviour, consisting in insulting, discriminatory verbal expressions, slaughtering a pig and nailing its head to the door of the school, and shooting at the school building with a pneumatic rifle, went beyond simply protesting against the opening of a Muslim school.

51. The Court considered that the applicants' allegations concerned an alleged interference with their private life on account of an assault on their physical and moral integrity motivated by hatred, which

fell to be examined under Article 8 of the Convention. As all applicants were Muslims, the Court also considered that they were involved in an activity related to the sphere or teaching within the meaning of Article 9 of the Convention. The Court examined the complaints under Articles 8 and 9 of the Convention taken in conjunction with Article 14. The Court examined the complaints in terms of the positive obligation on the State authorities to secure the rights under Articles 8 and 9 to those within their jurisdiction and to do so without discrimination. What was expected from the relevant authorities was to take swift and adequate measures to stop unlawful mob action, hate speech and other discriminatory actions on the part of the local population. The authorities were also expected to take more proactive steps that could realistically allow the applicants to exercise their religious rights, including their right to open a Muslim boarding school.

52. The Court considered, as far as the applicant's protection from mob action, hate speech and other discriminatory actions was concerned, that there was an apparent lack of an adequate response by the authorities to continuous interference with the private life, dignity and religious beliefs of the applicants. The Court considered that the police had allowed the protesters to engage repeatedly and enduringly in what the domestic courts later qualified as discriminatory treatment. It moreover considered that the impugned passive attitude of the authorities contributed to intensifying the discriminatory treatment the applicants suffered. In this case, the Court observed that the domestic authorities were confronted with prima facie indications of hate speech, threats and humiliating treatment motivated by the individual applicants' religious beliefs. In that case, prompt and efficient investigation was reasonable and necessary in order to discourage and suppress unlawful and discriminatory mob action. However, the anti-discrimination proceedings lasted for almost eight years, undermining the effectiveness of the remedy as such. Moreover, the courts did not consider it necessary to order the police to ensure the identification and sanctioning of those responsible or taking any other measures aimed at permanently restoring public order in the neighbourhood and ensuring that the applicants' religious rights were adequately protected. The Court considered that the domestic courts had overlooked the role the police were to play in a religiously tense atmosphere. The authorities had also fallen short of their positive obligation to investigate in an effective manner and identifying and sanctioning those responsible. The cumulative effect of the police not intervening to stop the discriminatory behaviour and of the shortcomings in the investigation was that openly religiously biased violent acts remained without any legal consequences and the applicants were not provided with the required protection against the interference with their private life, dignity and religious beliefs. The Court concluded that there had been a breach of the State's positive obligations under Articles 8 and 9 of the Convention taken in conjunction with Article 14 of the Convention.

C. Article 10

53. Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (*Handyside v. the United Kingdom*, 1976, § 49).

54. The Court has also been called upon to consider the application of Article 10 of the Convention in a number of cases concerning statements, verbal or non-verbal, alleged to stir up or justify violence, hatred or intolerance.[11] It has been particularly sensitive towards sweeping statements attacking or casting in a negative light entire ethnic, religious or other groups and has examined those issues under Article 10 of the Convention (*Perinçek v. Switzerland* [GC], 2015, § 206). In this context, where there

[11] For further details, see the Key Theme on Article 10 – Hate speech.

is a conflict between two rights protected by the Convention, the Court examines whether the national authorities struck a proper balance between protection of the right to freedom of expression and other rights and rights or values guaranteed by the Convention when interfering with the right to freedom of expression, which must, in addition, be provided by law and pursue a legitimate aim (*Perinçek v. Switzerland* [GC], 2015, §§ 124 and 274). However, when the statements have been found to constitute incitement to hatred, the Court has examined them under Article 17 of the Convention, the application of which Article leads to a finding of incompatibility *ratione materiae* with Article 10 of the Convention (*Pavel Ivanov v. Russia* (dec.), 2007). However, even for statements falling under Article 10 of the Convention, the Court has sometimes relied on Article 17 as an aid in interpretation without explicitly ruling on the question whether that Article should be applied in the circumstances of a given case[12]

55. The latter approach was applied in the case of *Perinçek v. Switzerland* [GC], 2015[13], where the Court joined the question whether Article 17 was to be applied to the merits of the applicant's complaint under Article 10 of the Convention (§ 115) and eventually saw no reason to apply it. That case concerned the conviction of a Turkish politician in Switzerland in relation to public speeches that he had made there, in which he had denied that the mass killings of Armenians in the Ottoman Empire in 1915 and over the following years had amounted to genocide. In examining his complaints under Article 10, the Court found that the applicant's statements had affected the right of Armenians to respect for their and their ancestors' dignity, including their right to respect for their identity, which was constructed around the understanding that their community had suffered genocide, which were protected under the "private life" heading of Article 8 of the Convention (§ 227). It noted in that regard that the Armenian community attached immense importance to the question of whether the tragic events of 1915 and the following years were to be regarded as genocide and was acutely sensitive to any statements regarding that point (§ 252). On the facts of the case, however, the Court found a violation of Article 10 (§§ 229-281). Among others, it established that the applicant's statements could not be seen as a form of incitement to hatred or discrimination, noting that the applicant did not call the Armenians liars, use abusive terms with respect to them, or attempt to stereotype them (§ 233).

56. In *Pavel Ivanov v. Russia* (dec.), 2007, the applicant, owner and editor of a newspaper, who was convicted of public incitement to ethnic, racial and religious hatred through the use of mass-media, published a series of articles portraying the Jews as the source of evil in Russia, calling for their exclusion from social life. The Court has acknowledged the anti-Semitic nature of the applicant's views and concurred with the domestic courts' assessment that his publications had aimed to incite hatred towards the Jewish people. As such an attack on one ethnic group has contradicted the Convention's core values, notably tolerance, social peace and non-discrimination, the Court found that, by reason of Article 17, the applicant could not benefit from the protection afforded by Article 10 of the Convention. Accordingly, the application was declared inadmissible.

57. Furthermore, in *Atamanchuk v. Russia*, 2020, concerning the criminal conviction, fine and two-year ban on journalistic or publishing activities imposed on a businessman for hate speech against non-Russian ethnic groups, the Court found no violation of Article 10. In his articles, the applicant had stated that these ethnic groups were prone to crime, would "slaughter, rape, rob and enslave, in line with their barbaric ideas" and "participated in the destruction of the country". The Court noted the lack of sufficient factual basis for the sweeping remarks and that the wording of the impugned statements could be reasonably assessed as stirring up base emotions or embedded prejudices in relation to the local population of non-Russian ethnicity. Thus, even though the Article did not contain any explicit call for acts of violence or other criminal acts, and in the context of the respondent State's

[12] For more detailed information, see also the Guide on Article 10 – Freedom of expression and the Guide on Article 17 – Prohibition of abuse of rights.

[13] Compare and contrast *M'Bala M'Bala v. France* (dec.), 2015, §§ 41-42.

fight against hate speech, the Court accepted that the measures imposed had not disproportionally infringed the applicant's freedom of expression (§§ 61-73).

58. Finally, in *Gapoņenko v.Latvia* (dec.), 2023, §§ 31-33 and 43, concerning the arrest in 2018 and subsequent detention of the applicant for various alleged criminal offences related to actions directed against national independence and incitement to hatred, the Court declared the applicant's complaints under Article 5 §§ 1 and 3 and Article 10 of the Convention inadmissible. The applicant had put a series of posts on social media concerning Russo-Latvian relations in which he had addressed, among many topics, NATO, language policy in Latvia and the Russian minority in Latvia, with accusations that the NATO presence in Latvia was to intimidate Russophones, and threats of nuclear war on Latvian territory. The Court found under Article 5 that there had been a "reasonable suspicion" that the applicant had committed offences, and that the domestic courts' reasoning had not been arbitrary. The detention interfered with his freedom of expression for the "prevention of disorder or crime". Noting the specific socio-political context underlying the applicant's publications under Article 10, the Court accepted that the interference was necessary in a democratic society.

VI. Cultural Rights and Private Life

Article 8 of the Convention – Right to respect for private and family life

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 14 of the Convention – Prohibition of discrimination

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1 of the Convention– Protection of property

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

59. Although the Convention does not explicitly protect cultural rights as such, the Court, through a dynamic interpretation of different Articles of the Convention, has gradually recognised substantive rights which may fall under the notion of "cultural rights" in a broad sense. The provisions mostly invoked in relation to cultural rights are Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the Convention, as well as Article 1 of Protocol No. 1 (right to property) and Article 2 of Protocol No. 1 (right to education). Cultural rights are of key importance for persons or entities belonging to national minorities, including cultural, linguistic or ethnic minorities. This is particularly true concerning the

right to maintain a minority identity[14] and to lead one's private and family life in accordance with the traditions and culture of that identity.

60. The Court has examined cases concerning cultural rights of minorities under Articles 8 and 14 of the Convention, and Article 1 of Protocol No. 1 to the Convention.[15]

A. Contact rights

61. The Court has considered cases regarding alienation of a child from his or her identity assessing the best interests of the child, which, depending on their nature and seriousness, may override those of the parents (*Abdi Ibrahim v. Norway* [GC], 2021, § 145, referring to *Strand Lobben and Others v. Norway* [GC], 2019, § 206). The case of *Abdi Ibrahim v. Norway* [GC], 2021, concerned the complaint of a Somali refugee whose child was taken into foster care and placed with a Christian family, despite her having expressly asked that he be placed with a relative or at least a Somali or Muslim family. The Grand Chamber held that, whereas the actions of the authorities had included efforts to find a more suitable foster home for the child at the outset, the arrangements made thereafter regarding contact had failed to take due account of the applicant's interest in allowing him to retain at least some ties to his cultural and religious origins (§ 161). Emphasising the gravity of the interference and the seriousness of the interests at stake, the Grand Chamber concluded the definitive cut off of the applicant's ties with her son to constitute a violation of Article 8 of the Convention (§§ 161-162)

62. The case of *Jansen v. Norway*, 2018, concerned a child of Roma origin who was placed into public care due to the risk of violence and abduction by the father, thereby losing contact with her mother, which could also lead to the child's alienation from her Roma identity. The Court held that the risk of abduction of the applicant's child by her father (and hence the issue of her protection) should not prevail over addressing sufficiently the mother's contact rights with the child, a separation from whom could also lead to an alienation of the child from her Roma identity. It found a violation of Article 8 of the Convention because of the potential negative long-term consequences for the daughter of losing contact with her mother, and consequently alienating from her Roma identity, and the positive duty to take measures to facilitate family reunification had not been sufficiently weighed in the balancing exercise (§§ 102-105).

63. Similarly, in *Terna v. Italy*, 2021, the applicant's granddaughter was taken into public care because she had lived in a criminal environment and the applicant had been unable to care for her. Although the child's guardian had asked the court to suspend the applicant's contacts with her granddaughter altogether on account of a risk that the child would be abducted by fellow members of the Roma community, that proposal was rejected by the court. The Court found a breach of Article 8 in that, due to a systemic problem in Italy, no visits ever took place between the applicant and her granddaughter. However, despite available data showing that a large number of Roma children were taken into care in Italy, in the present case the domestic courts had not used arguments concerning the child's ethnic origin and instead their action was based on the particular child's best interests (§§ 63-77). Moreover, although the guardian's considerations had reflected prejudice and could not be dismissed as unfortunate remarks, they were in themselves insufficient to conclude that the domestic court decisions had been motivated by the child's ethnic origin. Therefore, the Court found no violation of Article 14 in conjunction with Article 8 (§§ 95-100).

[14] See the Chapter on the Right to Self-identification above.

[15] For more detailed information, see also the Guide on Article 8 – Right to respect for private and family life, home and correspondence, the Guide on Article 14 and on Article 1 of Protocol No. 12 – Prohibition of discrimination and the Guide on Article 1 of Protocol No. 1 – Protection of property.

B. Forced sterilisation

64. In a case concerning sterilisation of a Roma woman without her informed consent, *V.C. v. Slovakia*, 2011, the applicant complained that her ethnic origin and the widespread intolerance towards the Roma had played a decisive role in medical personnel's discriminatory decision to sterilise her. In this regard, the Court has acknowledged that the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups. It has held that the information available was not sufficient to demonstrate in a convincing manner that the doctors had acted in bad faith, with the intention of ill-treating the applicant. While the Court has found no procedural violation of Article 3, it found a violation of its substantive limb due to the gross disregard for her right to autonomy and choice as a patient (§§ 106-120 and §§ 126-129). Furthermore, having noted that the applicant's sterilisation without her informed consent called for serious criticism, the Court has concluded that the objective evidence was not sufficient to convince the Court that it was part of an organised policy or that the hospital staff's conduct was intentionally racially motivated (see, *mutatis mutandis*, *Mižigárová v. Slovakia*, 2010, §§ 117 and 122). In this connection, the Court has ruled that the State failed to comply with its positive obligation under Article 8 to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilisation (§§ 176-180). However, it has not found necessary to examine separately the complaint under Article 14 (concerning forced sterilisation of Roma women in hospitals, see also, *N.B. v. Slovakia*, 2012, and *I.G. and Others v. Slovakia*, 2012, where the Court reached similar conclusions).

C. Cultural heritage

65. The scope of cultural-heritage rights might be broader for individuals belonging to minority groups (*Ahunbay and Others v. Turkey* (dec.), 2019). The case concerned a complaint made by individuals – although not belonging to a minority group – that the realisation of a dam construction threatening the Hasankeyf archaeological site would breach the right of every individual to the protection of, and access to, their cultural heritage, values which they considered inherent to the Convention, viewed in the light of other international instruments.

66. The Court noted that the gradual increase in awareness of the values linked to conservation of the cultural heritage and access to it could be regarded as having created a certain international legal framework, and that the present case could consequently be falling within an evolving subject area. Whereas the Court was prepared to consider that there existed a shared European and international perception of the need to protect the right of access to the cultural heritage, the Court emphasized that such a protection generally focussed on situations and regulations pertaining to the right of minorities to enjoy their own culture freely and the right of indigenous peoples to maintain, control and protect their cultural heritage. In contrast, the Court did not perceive, to date, any European consensus or even a trend among the member States of the Council of Europe which might have required the scope of the rights in question to be challenged or which would have made it possible to infer from the Convention's provisions that there existed a universal individual right to the protection of one or another part of the cultural heritage, as requested in the present application. Consequently, the Court declared the application inadmissible, to be incompatible *ratione materiae* with the provisions of the Convention (§§ 21-26).

67. While in a subsequent case – which did not concern minority rights in particular - *The J. Paul Getty Trust and Others v. Italy*, 2024, the Court stressed that the protection of a country's cultural heritage is a legitimate aim for the purposes of the Convention and noted that there is a strong consensus in international and European law with regard to the need to protect cultural objects from unlawful exportation from the country of origin and to return them therein, the Court has also confirmed the wide margin of appreciation of member States (*The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 340

and 347). In the latter case, the Italian authorities had issued a confiscation order aimed at recovering a bronze statue from the classical Greek period from the Getty Museum in the US. After noting that the confiscation order had been compliant with the principle of lawfulness, the Court relied on several instruments to stress the importance of protecting cultural goods from unlawful exportation and retained that the domestic authorities had been pursuing a legitimate interest (§§ 325, 341 and 360). As to whether the measure had been proportionate to the aim pursued, noting the State's wide margin of discretion as to what was "in accordance with the general interest", particularly where cultural heritage issues were concerned, the strong consensus in international and European law with regard to the need to protect cultural objects from unlawful exportation and to return them to their country of origin, the Trust's negligent conduct, as well as the very exceptional legal vacuum in which the domestic authorities had found themselves in the present case, the Court concluded that the authorities had not overstepped their margin of appreciation (§ 408). The Court concluded that there had been no violation of Article 1 of Protocol No. 1 to the Convention (§ 409).

D. Housing: traditional lifestyle

68. The Court has examined cases concerning matters relating to housing within the ambit of Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1, with reference to a particular way of life of minorities.[16]

69. The Court has reiterated that the concept of "home" within the meaning of Article 8 is not limited to premises which are lawfully occupied or which have been lawfully established.[17] Whether or not a particular premises constitutes a "home" which attracts the protection of Article 8 will depend on the factual circumstances, namely, the existence of sufficient and continuous links with a specific place (see *Winterstein and Others v. France*, 2013, § 141 with further references therein; *Buckley v. the United Kingdom*, 1996, §§ 52-54; for people living illegally in caravans in an unauthorised camp for only six months, lacking sufficient and continuous links with the specific place, see *Hirtu and Others v. France*, 2020, § 65; compare and contrast *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 91).

70. Acknowledging that the concept of "home" extends beyond conventional housing is especially crucial when considering the living situations of Roma, as these minority groups often reside in temporary dwellings. The Court reiterated that "home" is not limited to traditional residences, therefore it includes, among other things, caravans and other unfixed abodes (*Chapman v. the United Kingdom* [GC], 2001, §§ 71-74; compare and contrast with *Hirtu and Others v. France*, 2020, § 65). It includes cabins or bungalows stationed on land, regardless of the lawfulness of the occupation under domestic law (*Yordanova and Others v. Bulgaria*, 2012, § 103; *Winterstein and Others v. France*, 2013, § 141).

71. In cases concerning housing matters, the Court has emphasised that there is no right to be provided with a home under Article 8 of the Convention (*Chapman v. the United Kingdom* [GC], 2001, § 99; *Yordanova and Others*, 2012, § 130; *Hudorovič and Others v. Slovenia*, 2020, § 114; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 98). In this context it must be recalled that, according to the Court's case-law, Article 8 does not guarantee the right to have one's housing problems solved by the domestic authorities, as the scope of any positive obligation to house the homeless is limited (*Hudorovič and Others v. Slovenia*, 2020, § 114; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 98). Nevertheless, in exceptional circumstances, an obligation to secure shelter to particularly vulnerable individuals may arise from Article 8, including Roma as an outcast community and one of the socially

[16] Given the significant overlap between the concept of "home" and that of "property", cases concerning housing relate both to Article 8 of the Convention and Article 1 of Protocol No. 1.

[17] For further details see the Guide on Article 8 – Right to respect for private and family life, home and correspondence under "Home" and the Guide on Social rights under Chapter "Housing".

disadvantaged groups (*D.H. and Others v. the Czech Republic* [GC], 2007, § 182; *Yordanova and Others v. Bulgaria*, 2012, § 130).

72. The Court has noted the emerging international consensus amongst the member States of the Council of Europe acknowledging the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community. The Court further underlined that the complexity and sensitivity of the issues involved in policies balancing the interests of the general population and the interests of a minority with possibly conflicting mandates rendered the Court's role a strictly supervisory one (*Chapman v. the United Kingdom* [GC], 2001, §§ 93-94).

73. The Court has stated that although the fact of belonging to a minority with a traditional lifestyle different from that of the majority does not confer an immunity from general laws intended to safeguard the assets of the community as a whole, it may have an incidence on the manner in which such laws are to be implemented (*Chapman v. the United Kingdom* [GC], 2001, § 96; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 97). In this connection, the socially disadvantaged groups, and outcast communities, regardless of the ethnic origin of their members, may need assistance in order to be able effectively to enjoy the same rights as the majority population (*Yordanova and Others v. Bulgaria*, 2012, § 129).

74. The Court has long acknowledged the disadvantaged and vulnerable position of the Roma population as a minority which requires special consideration to be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases[18] (see *Chapman v. the United Kingdom* [GC], 2001, § 96; *Connors v. the United Kingdom*, 2004, § 84; *Hudorovič and Others v. Slovenia*, 2020, § 142; *Hirtu and Others v. France*, 2020, § 70; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 97; *Paketova and Others v. Bulgaria*, 2022, § 161). To this extent, there is thus a positive obligation imposed on the member States to facilitate the way of life of the Roma and Travellers as minority groups, and to safeguard their rights in accordance with Article 8 (see *Chapman v. the United Kingdom* [GC], 2001, § 96; *Winterstein and Others v. France*, 2013, § 148; *Faulkner and McDonagh v. Ireland* (dec.), 2022, § 112).

75. In the context of Article 8, the applicants' specificity as a social group and their needs have been considered one of the relevant factors in the assessment of the proportionality that the national authorities are under a duty to undertake (see *Yordanova and Others v. Bulgaria*, 2012, § 129; *Hudorovič and Others v. Slovenia*, 2020, § 142). The existence of procedural safeguards for the measures of interference is a crucial consideration in the Court's assessment of the proportionality of the interference (*Connors v. the United Kingdom*, 2004, §§ 83 and 92; *Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 101-102). The Court has held, inter alia, that the loss of one's home is a most extreme form of interference with the right to respect for the home (*Yordanova and Others v. Bulgaria*, 2012, § 118; *Buckland v. the United Kingdom*, 2012, § 65). In cases concerning eviction of minorities or their loss of home, the Court assessed whether the applicants had benefitted from sufficient procedural safeguards and whether the decision-making process had been fair such as to afford due respect to their rights under Article 8 and whether the domestic authorities had acted within their margin of appreciation (*Chapman v. the United Kingdom* [GC], 2001, § 92; *Buckland v. the United Kingdom*, 2012, § 64; *Winterstein and Others v. France*, 2013, § 148; *Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 101-109); it also took into account the efforts made by the local authorities to secure alternative accommodation (*Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 110-113; see also *Chapman v. the United Kingdom* [GC], 2001, §§ 103-104; *Yordanova and Others v. Bulgaria*, 2012, § 133).

[18] For further details see the Guide on Article 8 – Right to respect for private and family life, home and correspondence under Chapter "Home".

76. In the context of accommodation for Roma, the criteria for assessing compliance with the requirements of Article 8 were clarified in *Yordanova and Others v. Bulgaria*, 2012, (§ 118 and the references cited therein) and comprehensively set out in *Winterstein and Others v. France*, 2013 (§ 148, with further references therein). The Court has recently provided a recapitulation of the relevant case-law and elaborated on the general principles concerning the State's margin of appreciation and the proportionality assessment in *Faulkner and McDonagh v. Ireland* (dec.), 2022. It follows that, whereas national authorities have a margin of appreciation due to their direct and continuous contact with local authorities which makes possible to evaluate the local needs and conditions, it varies depending on, inter alia, the special consideration to be given to the needs and lifestyle of vulnerable minorities like Roma and Travellers, which must be duly taken into account in achieving a legitimate aim (*Faulkner and McDonagh v. Ireland* (dec.), 2022, §§ 95 and 97).

77. The Court has examined similar complaints in relation to Article 8 in other factual scenarios:

- *Buckley v. the United Kingdom*, 1996, § 85, concerning the refusal of planning permission which would enable the applicant of Roma ethnic origin to live in caravans on land which she owns (no violation);
- *Buckland v. the United Kingdom*, 2012, § 70, concerning the threatened eviction of a Roma woman from a caravan site after a possession order had been made against her (violation);
- *Winterstein and Others v. France*, 2013, § 167, concerning the eviction of French travellers from private land where they had been living for many years (violation);
- *Bagdonavicius and Others v. Russia*, 2016, § 108, concerning the forced eviction of Roma families and destruction of their homes without any rehousing plans or alternative accommodation (violation);
- *Aydarov and Others v. Bulgaria* (dec.), 2018, § 91, concerning demolition orders in respect of two Roma families who had built their houses illegally and without planning permits on land belonging to the municipality (inadmissible);
- *Hirtu and Others v. France*, 2020, § 76, concerning the eviction of Roma living in an unauthorised camp for six months, without any offer of accommodation (violation).

78. The Court set out the relevant principles in assessing the necessity of an interference with the right to a "home" in the case of *Connors v. the United Kingdom*, 2004, which concerned the eviction of a Roma family from a local authority Roma caravan site (§§ 81-84). The central issue in this case was whether the applicable legal framework provided the applicant with sufficient procedural protection of his rights (§ 85). Given the seriousness of the interference with the applicant's rights under Article 8, which required weighty reasons of public interest by way of justification, the State's margin of appreciation must be regarded as correspondingly narrowed (§ 86). The power to evict without the burden of giving reasons liable to be examined as to their merits by an independent tribunal has not been convincingly shown to respond to any specific goal or to provide any specific benefit to members of the Roma community (§ 94). In light of the vulnerable position of Roma as a minority, which imposed a positive obligation on the State to facilitate their way of life and the absence of procedural safeguards, which permitted a local authority to remove Roma from an authorised site without any scrutiny by the courts, the Court held that the eviction of the applicant and his family could not be regarded as justified by a "pressing social need" or proportionate to the legitimate aim pursued (§ 95). There had accordingly been a violation of Article 8 of the Convention. Since the removal of the property was a consequential element of the eviction of the applicant and his family from the local authority site, apart from those already addressed under Article 8, no separate issue was found to arise under Article 1 of Protocol No. 1. The Court, thus, found it unnecessary to examine the complaint under this provision (§ 100).

79. Where national authorities, in their decisions ordering and upholding the applicant's eviction, have not given any explanation or put forward any arguments demonstrating that the applicant's eviction was necessary, the Court may draw the inference that the State's legitimate interest in being

able to control its property should come second to the applicant's right to respect for his home (*Yordanova and Others v. Bulgaria*, 2012, § 118). In a case, which concerned the planned eviction of Roma from their long-established settlements without arrangements for alternative housing, the Court found that the eviction would constitute a violation of Article 8 of the Convention on the grounds that the national authorities had not taken into account the applicants' underprivileged status and had failed to provide reasons as to why the applicants' removal was necessary, in particular in the absence of alternative shelter which would render them homeless (*Yordanova and Others v. Bulgaria*, 2012, §§ 122-134). As the Court has already held that the enforcement of the removal order would violate the applicants' Article 8 rights by failing to provide the minimum procedural safeguards, the Court deemed it unnecessary to examine separately whether there would a violation of Article 1 of Protocol No. 1 (§§ 150-153). However, in the case of *Ivanova and Cherkezov v. Bulgaria*, 2016, the Court drew a distinction between the strictness of the scrutiny under Article 8 of the Convention and Article 1 of Protocol No. 1, with the latter not necessarily presupposing the availability of a procedure requiring an individualised assessment of the necessity of each measure of implementation of planning rules (§§ 73-74). In that case, the Court examined the complaint of the applicants regarding an order, adopted without a proportionality assessment, for demolition of the applicant's home for breach of building reparations and held that, if the intended demolition were to be enforced without review of its proportionality, it would constitute a violation under Article 8 of the Convention, but not under Article 1 of Protocol No. 1 of the Convention. This is because Article 1 of Protocol No. 1 allows for for the legislature to lay down broad and general categories, whereas Article 8 demands for a scheme whereby the proportionality of a measure of implementation is to be examined in each individual case (§ 74).

80. In *Hudorovič and Others v. Slovenia*, 2020, the Court addressed the scope of the State's positive obligation to ensure access to safe drinking water and sanitation for Roma communities residing in illegal settlements. Whereas the Court reiterated that Article 8 does not in terms recognise a right to access to safe drinking water, the Court acknowledged that a persistent and long-standing lack of access to safe drinking water can, by its very nature, have adverse consequences for health and human dignity, effectively eroding the core of private life and the enjoyment of a home within the meaning of Article 8 (§ 116). Considering the strong tie between the question of applicability and the merits in the assessment of whether or not a private-life issue for which State has a positive obligation was raised in that case, the Court decided to join the issue of the applicability with the merits. The Court held that the State could not bear the entire burden of providing running water to the applicants' homes, in particular when, as in this case, there were no financial or other obstacles preventing the applicants from improving their living conditions. In these circumstances, noting that the authorities had provided the applicants with the opportunity to access drinking water and that the latter were in receipt of social benefits, the Court found that the respondent State had taken into account the applicants' vulnerable position and satisfied the requirements of Article 8 of the Convention (§§ 149-159). The same conclusion was reached in *Faulkner and McDonagh v. Ireland* (dec.), 2022, concerning the displacement of members of a Travellers' community from an illegally occupied site, at the side of a public road which was having works carried out on it, as part of a new road scheme: in finding the case inadmissible, the Court emphasised that the orders requiring the Roma to remove their caravans pursued the legitimate aim of public safety and that a broader margin of appreciation had to be allowed, given that the interference had arisen in the context of road works of importance to the local community, and which pertained to the sphere of social and economic policy (§§ 107-115).

81. In *Chapman v. the United Kingdom* [GC], 2001, § 98, the Grand Chamber considered whether the refusal of applications by Roma for planning permission to station residential caravans on land owned by them amounted to a violation of Article 8, alongside the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1. The Court did not accept the applicant's argument that, because statistically the number of Roma is greater than the number of places available on authorised Roma sites, the decision not to allow the applicant Roma family to occupy land where they wished in order to install their caravan in itself constituted a violation of Article 8. This would mean imposing on all

member States, an obligation under Article 8 to provide an adequate number of suitably equipped sites for the Roma community. The Court has noted that it was not convinced, despite the undoubted evolution that has taken place in both international law, as evidenced by the Council of Europe Framework Convention for the Protection of National Minorities, and domestic legislations in regard to protection of minorities, that Article 8 could be interpreted as implying for States such a far-reaching positive obligation of general social policy (§§ 93-94 and 98). In finding no breach of Article 8, the Grand Chamber emphasised that the humanitarian considerations which might have supported a different outcome at national level could not serve as grounds for a Court decision that would essentially exempt the applicant from complying with national planning laws. It also stressed that such a decision would impose an obligation on governments to guarantee that every Roma family has available accommodation suitable for their needs (§§ 115-116). For the same reasons as those given under Article 8 of the Convention, the Court found that any interference with the applicant's peaceful enjoyment of her property was proportionate and struck a fair balance in compliance with the requirements of Article 1 of Protocol No. 1. There was, accordingly, no breach of that provision (§§ 118-120).

82. The Court also found violations of Article 8 taken in conjunction with Article 14 of the Convention in certain cases concerning the destruction and damaging of people's houses based on their ethnicity, in particular, the houses of the Roma residents due to the attacks on villages motivated by anti-Roma sentiment (*Moldovan and Others v. Romania (no. 2)*, 2005, § 140; *Burlya and Others v. Ukraine*, 2018, § 170). In finding such violations, the Court gave particular weight to the general background of prejudice against Roma, the authorities' general attitude perpetuating feelings of insecurity in the Roma population whose houses and property had been destroyed, as well as to the authorities' repeated failure to put a stop to the grave and unjustified interferences with the applicants' right to respect for their private and family life and their homes (*Moldovan and Others v. Romania (no. 2)*, 2005, §§ 108-109; *Burlya and Others v. Ukraine*, 2018, §§ 168-170).

83. The Court distinguished the above-noted cases from that of *Paketova and Others v. Bulgaria*, 2022, § 154, in which the events unfolded in relation to Roma, did not result in damage to their houses or belongings (contrast *Moldovan and Others v. Romania (no. 2)*, 2005, § 19, and *Burlya and Others v. Ukraine*, 2018, § 12) or the applicants did not allege that they had been evicted by the authorities (contrast *Connors v. the United Kingdom*, 2004, § 28) or that they had been served with eviction notices by them (contrast *Yordanova and Others v. Bulgaria*, 2012, § 47). The case of *Paketova and Others v. Bulgaria*, 2022, concerned several families of Roma origin who were forced to leave their homes during recurrent anti-Roma marches in their village and not being able to return. The Court found a violation of Article 8 of the Convention taken in conjunction with Article 14 due to the cumulative effect of the omissions of the domestic authorities, in terms of their positive obligations, in particular, the officials' repeated public display of unacceptance of the Roma, which represented a real obstacle to their peaceful return to their homes (*ibid.*, §§ 167-168). Such positive obligations of the authorities were even more important in light of the fact that the applicants claimed they had been targeted on ethnic grounds (§§ 160-163). Therefore, the applicants had been left unable to peacefully enjoy their private and family life and their homes and had not been provided with the required protection of their Article 8 rights (*ibid.*).

VII. Religious Rights[19]

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

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

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

Article 11 of the Convention – Freedom of assembly and association

"1. Everyone has the right to freedom of peaceful assembly and 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."

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

84. Cases concerning religious rights of minorities before this Court have been examined under Articles 9, 11 and 14 of the Convention.[20]

A. Religious public services/events and religious leaders

85. In the case of *Izzettin Dogan and Others v. Turkey* [GC], 2016, the applicants were followers of the Alevi faith to whom the State authorities had refused to provide the same status (religious public service) accorded to the majority of citizens who are of the Sunni branch of Islam. They alleged that the lack of recognition of the Alevi faith as a religious denomination distinct from Sunni Islam had caused their places of worship, the cemevis, to be regarded as cultural centres, with the result that they were deprived of the status of places of worship and of the attendant advantages. In that perspective, the applicants alleged not only that the State had violated its obligation of neutrality and impartiality but also that they had been the victims of discrimination on the ground of their religion as they had received less favourable treatment than followers of the Sunni branch of Islam in a comparable situation, without any objective and reasonable justification (§§ 71-72 and 138). The Court observed that the religious communities faced numerous legal obstacles in the absence of a clear legal framework governing unrecognised religious minorities such as the Alevi faith, which caused numerous additional problems with regard to the ability to build places of worship, receive

[19] For further details see the Key Theme on Article 9 – Autonomy of religious organisations.
[20] For more detailed information, see also the Guide on Article 9 – Freedom of thought, conscience and religion, the Guide on Article 11 – Freedom of assembly and association, and the Guide on Article 14 and on Article 1 of Protocol No. 12 – Prohibition of discrimination.

donations or subsidies and have access to the courts. The Court was therefore not convinced that the freedom to practise its faith which the authorities left to the Alevi community enabled that community to fully exercise its rights under Article 9 of the Convention. The Court also noted that the State's duty of neutrality and impartiality excluded any power on its part to determine whether religious beliefs or the means used to express such beliefs were legitimate. The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of religion, such as the Alevi faith, of legal protection. The Court, thus, found that the State had overstepped its margin of appreciation, which constituted a violation of the applicant's Article 9 rights (§§ 89-135). Furthermore, the Court noted that the choice made by the State had been manifestly disproportionate to the aim pursued, due to, among others, the existence of an Alevi community with deep roots in Turkish society and history, the importance for that community of being legally recognised, the Government's inability to justify the glaring imbalance between the status conferred on the majority understanding of Islam, in the form of a religious public service, the almost blanket exclusion of the Alevi community from that service, and also the absence of compensatory measures. There has therefore been a violation of Article 14 of the Convention taken in conjunction with Article 9 (§§ 165-185).

86. The case *Serif v. Greece*, 1999, concerned the conviction of mufti for usurping the functions of a minister of a "known religion" and publicly wearing the uniform of such a minister. The applicant, a Greek citizen elected as a mufti, who was not the only person claiming to be the religious leader of the local Muslim community, complained that his conviction amounted to a violation of his rights under Articles 9 of the Convention. The courts which convicted the applicant did not mention any specific acts by the applicant taken with a view to producing legal effects, but only to his delivering messages and speeches and appearing in the clothes of a religious leader. However, in the Court's view, punishing a person for the mere fact that he acted as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society (§ 51). There existed an officially appointed mufti, but there is no indication that the applicant attempted to exercise the judicial and administrative functions for which the legislation makes provision and in democratic societies the State does not need to take measures to ensure that religious communities remain or come under a unified leadership. The Court has underlined that, while tension may be created where a religious or any other community becomes divided, this is one of the unavoidable consequences of pluralism and the role of the authorities is not to remove the cause of tension by eliminating pluralism but to ensure that competing groups tolerate each other. As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not necessary in a democratic society for the protection of public order (§§ 46-54). Therefore, a violation of Article 9 was found.

87. The case of *Centre of Societies for Krishna Consciousness in Russia and Frovlov v. Russia*, 2021, mainly concerned the applicant association's unsuccessful attempts to seek protection against the hostile messaging by the regional authorities' targeting the Krishna religious movement in a brochure called "Watch out for cults" compiled by Government experts in co-operation with a State university, published by decision of the regional Government and distributed to educators for dissemination. The Court held that the failure to protect Krishna religious organization's beliefs from hostile speech used by regional State authorities in an "anti-cult" brochure was a violation of Article 9 freedom of religion. The Court reasoned that it appeared that the exclusion of new or minority religious movements had been embedded in the set-up of the project from its inception. The publication had painted a starkly negative picture of new religious movements, including the Krishna movement, and had used emotionally charged and derogatory terms for describing its teachings. This did not suggest that any consideration had been given to the State's duty to abstain from assessing the legitimacy of religious beliefs or the ways in which those beliefs were expressed. Further, the allegations against the applicant centre's beliefs had been unsubstantiated. The Court also considered that the authorities' rejection of the second applicant's notifications of a public religious event constituted an interference

with his rights under Article 11, interpreted in the light of Article 9 of the Convention. The authorities did not have any objections to the planned events being held at a specific location or time, but rather to their religious nature. This amounted to content-based restrictions on freedom of assembly which should be subjected to the most serious scrutiny by the Court. Additionally, the Court found that the restriction on the second applicant's right had not been "necessary in a democratic society". In this connection, the Court was not convinced by the argument that the conduct of a public assembly for the promotion of Vaishnavism had been "incompatible with the religious beliefs of others". Further, the peaceful character of the planned religious events had not been disputed and there had been no reason to presume a risk of any disturbance of public order or breach of peace on their part. It would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority. The Court found a violation of Article 11 of the Convention, interpreted in the light of Article 9 of the Convention (§§ 48-59).

B. Practical exercise of a given religion

88. The Court has found that imposing a fine on an applicant for practicing a religion not recognised by the State constituted a violation of the freedom of religion. In the case of *Masaev v. Republic of Moldova*, 2009, the applicant, a Muslim, was the head of a non-governmental organisation that rented a private house. In 2004 a gathering of Muslims including the applicant was dispersed by the police when praying on the premises. The applicant was subsequently found guilty of practising a religion not recognised by the State and ordered to pay a fine. His appeal was dismissed without reasons and without inviting him to attend the hearing. The Court did not contest the State's power to put in place a requirement for the registration of religious denominations in a manner compatible with Articles 9 and 11 of the Convention. However, it did not follow, as the Government appeared to argue, that it was compatible with the Convention to sanction individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs. To admit the contrary would amount to the exclusion of minority religious beliefs which were not formally registered with the State, which, in turn, would mean that the State could dictate what a person had to believe. The Court could not agree with such an approach and held that the limitation on the applicant's right to freedom of religion provided by the Moldovan law had constituted an interference which had not been necessary in a democratic society, resulting in a violation of Article 9 of the Convention (§§ 19-26).

89. The Court has also considered national minorities rights and religious freedoms in prisons. In the case of *Erlich and Kastro v. Romania*, 2020, the Court considered whether appropriate measures were taken by prison authorities in the execution of a judgment recognizing the right of Jewish prisoners to have kosher meals. The applicants' complaints were examined in the light of the positive obligations flowing from Article 9 freedom of religion. The Court held that a whole set of appropriate measures had thus been put in place by the prison authorities, and the domestic authorities had done all that could reasonably have been expected of them to respect the applicants' religious convictions, particularly since kosher meals had to be prepared under special, strict conditions. Taking into account the State's margin of appreciation in this matter, the Court concluded that the national authorities have fulfilled, to a reasonable degree, their positive obligations arising from Article 9 of the Convention. In this regard, the Court found no violation (§§ 33-45).

90. When considering complaints relating to military service requirements and religious freedoms, the Court has weighed the States obligations under Article 9 of the Convention. The case of *Aydan and Others v. Armenia*, 2017, concerned the conviction of conscientious objectors, the four applicants who were Jehovah's Witnesses, for refusing to perform military or alternative service. The Court considered that the alternative service available to the applicants at the material time was not of a genuinely civilian nature. Although it was undisputed that it was of a civilian nature, other factors – such as authority, control, applicable rules and appearances – had to be taken into account when

deciding whether alternative service was of a genuinely civilian nature. In the applicants' case, the Court noted that military authorities were actively involved in the supervision of their service and had the power to influence their service by ordering their transfer to another institution or place of service: certain aspects of the alternative labour service were organised in accordance with military regulations; the alternative service was not sufficiently separated hierarchically and institutionally from the military system at the material time; and, lastly, as regards appearances, alternative civilian servicemen were required to wear a uniform and to stay at their place of service. The Court held that the authorities failed, at the material time, to make appropriate allowances for the exigencies of the applicants' conscience and beliefs and to guarantee a system of alternative service that struck a fair balance between the interests of society as a whole and those of the applicants, resulting in a violation of Article 9 of the Convention (§§ 67-74).

91. In the case of *Cha'are Shalom Ve Tsedek v. France* [GC], 2000, the applicant association alleged a violation of Article 9 on account of the French authorities' refusal to grant it the approval necessary for access to slaughterhouses with a view to performing ritual slaughter in accordance with the strict requirements of an Orthodox Jewish association. It further complained, under Article 14, that it was the victim of discrimination as such approval was granted only to the Paris Central Consistory, the association which represented the vast majority of Jews in France, whose ritual slaughterers allegedly did not carry out a sufficiently thorough examination of the meat which they certified as kosher. The Court noted that, regard being had to the margin of appreciation left to States particularly with regard to establishment of the delicate relations between the religious bodies and the State, it cannot be considered excessive or disproportionate. Furthermore, the Court has concluded that the difference of treatment which resulted from the measure was limited in scope. Such difference of treatment also had an objective and reasonable justification. Therefore, there was no violation of Article 9 taken alone or taken in conjunction with Article 14 (§§ 75-88).

92. In *Executief van de Moslims van België and Others v. Belgium*, 2024, the Court dealt with the question of religious exemptions from an obligation of prior stunning of animals in the context of ritual slaughter. The applicants were Belgian Muslim organisations and several Muslim and Jewish Belgian nationals, and they complained under Articles 9 and 14 about a ban imposed by impugned decrees, in Flemish and Walloon Regions, on the slaughter of animals in accordance with the precepts of their religion and that they faced the difficulty of obtaining meat from animals thus slaughtered (§§ 82-88). The Court noted that it was apparent from the parliamentary debates leading to the adoption of the two decrees in question that the absence of stunning prior to slaughter constituted an aspect of the religious ritual which attained a certain level of cogency, seriousness, cohesion and importance, at least for certain believers – such as the applicants – of the Jewish and Muslim faiths. The Court took into account the growing importance attached to the protection of animal welfare, including when examining the legitimacy of an aim pursued by a restriction on the freedom to manifest one's religion. Thus, it has stated for the first time that animal welfare could be linked to "public morals", as one of the legitimate aims exhaustively listed in the second paragraph of Article 9 of the Convention (§§ 92-102). The Flemish and Wallonian legislators had sought a proportionate alternative to the obligation of prior stunning taking into consideration the right claimed by persons of the Muslim and Jewish faiths to manifest their religion in the face of the growing importance attached to the prevention of animal suffering in the respective regions. It was not for the Court to determine whether this alternative satisfied the precepts of the religion of which the applicants were followers. On the other hand, its existence showed that the authorities concerned had sought to weigh up the rights and interests at stake and to strike a fair balance between them. The Court therefore considered that the measure complained of fell within the margin of appreciation afforded to the national authorities in this sphere (§§ 117-124).

93. As regards the second part of the applicants' complaint concerning the difficulty of obtaining meat that was in conformity with their religious convictions, the Flemish and Walloon Regions did not prohibit the consumption of meat from other regions or countries in which stunning prior to slaughter

was not a legal requirement. Moreover, the applicants had not shown before the Court that access to meat slaughtered in accordance with their religious beliefs had become more difficult after the entry into force of the impugned decrees. In this regard, the Court found no violation of Article 9 and concluded that the national authorities had not overstepped their margin of appreciation. They had taken a measure which was justified in principle and which could be considered proportionate to the aim of protecting animal welfare as an aspect of "public morals" (§§ 107-124). As to whether those circumstances could constitute a violation under Article 14 of the Convention in conjunction with Article 9, the Court reiterated that the alleged discrimination must come from a difference in treatment of persons in analogous, or relevantly similar, situations and that is based on an identifiable characteristic (§§ 142-144). The Court found no violation of Article 14 in conjunction with Article 9 regarding the complaint of discrimination that it examined from three perspectives, regarding situations which were claimed to be similar to theirs by the applicants, but in which there was allegedly a difference in treatment, namely: (i) the applicants' position as Jewish and Muslim believers compared with that of hunters and fishermen, (ii) the applicants' position as Jewish and Muslim believers compared with that of the general population, (ii) the position of the Jewish believers among the applicants, in relation to Muslim believers (*Executief van de Moslims van België and Others v. Belgium*, 2024, §§ 142-151).

C. Religious garments

94. The Court has dealt with a number of cases where the wearing of religious symbols and items of clothing that can also be a manifestation of belonging to a particular minority, such as the wearing of a headscarf or full-face veil, was at stake. In cases falling within the scope of Article 9 of the Convention, the Court's task is to determine whether the measures taken at national level are justified in principle and proportionate (*Leyla Şahin v. Turkey* [GC], 2005, § 110). In the case of *Leyla Şahin v. Turkey* [GC], 2005, concerning the prohibition for a student to wear the Islamic headscarf at university, the Grand Chamber noted that the interference was justified and proportionate because it balanced the need to uphold the principle of secularism, which is essential for maintaining public order and protecting the values underpinning the Convention, with the rights of individuals, and thus, that there was no breach of Article 9 of the Convention (§§ 112-123). Although no minority issue was raised, the Court reiterated the general principle that if it had been the case, the proportionality of the interference would have needed an assessment in regard to the balance that must be achieved to ensure the fair and proper treatment of people from minorities and avoids any abuse of a dominant position (*Leyla Şahin v. Turkey* [GC], 2005, § 108).

95. As to the wearing of religious symbols and clothing characteristic of a religious minority at the workplace, the case of *Dahlab v. Switzerland* (dec.), 2001, concerned a teacher prohibited from wearing the Islamic veil while on duty, and *Ebrahimian v. France*, 2015, concerned the contract of employment of a hospital social worker was not renewed because of her refusal to stop wearing the Muslim veil. In *Lachiri v. Belgium*, 2018, a Muslim woman was excluded from a courtroom on account of her refusal to remove her Islamic headscarf (hijab). In those instances, the Court ensured that the authorities did not remove the cause of tension by eliminating pluralism but, ensured that the competing groups tolerated each other (see *S.A.S. v. France*, 2014 §§ 127-28).[21]

D. Import ban on religious literature

96. The Court has also considered issues relating to the sale and distribution of religious materials and taxation of religious communities. For example, in the case of *Religious Community of Jehovah's*

[21] For further details see the Guide on Article 9 – Freedom of thought, conscience and religion under Chapter "Actions protected under Article 9".

Witnesses v. Azerbaijan, 2020, the applicant community, the Religious Community of Jehovah's Witnesses, complained under Articles 9 and 10 about the about the domestic authorities' refusal to allow the import and distribution of religious books published or commissioned for publication by the applicant community. As the books at issue were a commentary on the religious teaching of Jehovah's Witnesses, and the applicant community intended to use them for religious purposes, the application was examined under Article 10, interpreted, where appropriate, in the light of Article 9 of the Convention (§ 24). The Court has reiterated that a certain 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 religion or to incite religious hatred or intolerance. The authorities' margin of appreciation, however, is not unlimited and it goes hand in hand with Convention supervision. Indeed, such supervision can be considered all the more necessary given the rather open-ended notion of respect for the religious beliefs of others and the risks of excessive interference with freedom of expression under the guise of action taken against allegedly offensive material. The Court therefore examined whether such a serious measure as banning a book was compatible with freedom of expression It found that the domestic courts did not carry out a careful balancing exercise in conformity with the criteria laid down in its case-law and did not provide relevant and sufficient reasons for interference, which constituted a violation of Article 10 of the Convention (§§ 34-42).

97. In the case of *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, the applicant organisation appealed unsuccessfully against the tax authorities' refusal to exempt its regular imports of donated religious literature and other materials from taxation, as well as about the manner used to calculate the tax due. The Court has established in its case-law that, an economic, financial or fiscal measure could, in certain circumstances, constitute an interference with the exercise of rights secured under Article 9 of the Convention if that measure were found to have had a real and serious impact on a religious community's ability to pursue its religious activity. In the Court's view, it has not been demonstrated that the impugned measures, including the refusal to apply the tax exemption provided for in domestic legislation, have had such an effect on the applicant organisation as to fundamentally undermine its ability to develop its religious activity. The Court concluded that there was no indication that the applicant organisation was hindered in the exercise of its right to practise its religion as a result of the authorities' refusal to exempt it from VAT on the donated literature imported by it, and the manner in which the tax had been levied. Accordingly, the application was declared inadmissible (§§ 34-37).

VIII. Freedom of Assembly and Association[22]

Article 11 of the Convention – Freedom of assembly and association

> "1. Everyone has the right to freedom of peaceful assembly and 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."

[22] For the general principles concerning Article 11 see the Guide on Article 11 – Freedom of assembly and association. This Chapter reviews Article 11 cases of most relevance to the rights of minorities.

98. In its case-law the Court has addressed the freedom of assembly and association of national minorities under Article 11 of the Convention. On numerous occasions, it has affirmed the direct relationship between democracy, pluralism and the freedom of association: the manner in which national legislation enshrines the freedom of assembly and association, as well as its practical application by the authorities, reveal the state of democracy in the country concerned (*Gorzelik and Others v. Poland* [GC], 2004, § 88; *Sidiropoulos and Others v. Greece,* 1998, § 40).

99. The Court has recognised that the effective enjoyment of freedom of association and assembly is particularly important for persons belonging to minorities, including national and ethnic minorities. The existence of minorities and different cultures in a country is a historical fact that a democratic society has to tolerate, and even protect and support, according to the principles of international law (*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012, § 59).

100. The Court has acknowledged that associations formed for the purposes of protecting cultural or spiritual heritage and seeking an ethnic identity or asserting a minority consciousness, are important to the proper functioning of democracy. Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights (*Gorzelik and Others v. Poland* [GC], 2004, §§ 92-93).

101. One of the most important aspects of freedom of association is the ability to establish a legal entity in order to act collectively in a field of mutual interest; without such registration of the association, the right be deprived of any meaning (*Gorzelik and Others v. Poland* [GC], 2004, § 91). This is particularly relevant to individuals or organisations characterising themselves as national or ethnic minorities or wishing to promote the rights of such minorities.

102. The refusal to register an association asserting "minority consciousness" on the basis of mere suspicion as to the intentions of the association's founders to undermine the country's territorial integrity has been found disproportionate to the aim of protecting national security (*Sidiropoulos and Others v. Greece*, 1998, § 47). In *Sidiropoulos and Others v. Greece*, 1998, the domestic courts refused to register a Macedonian cultural association on the grounds that it intended to undermine the country's territorial integrity. The Court found the association's aims – the preservation and development of the traditions and culture of the Macedonian minority - perfectly legitimate. In its view, the inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics. The statement of the national courts that the association represented a danger to Greece's territorial integrity had been based on a mere suspicion. Should the association, once registered, engage in activities incompatible with its declared aims or the law, it was open to the authorities to dissolve it. Consequently, the Court concluded that the refusal to register the applicants' association was disproportionate to the objectives pursued, and thus in violation of Article 11 (§§ 43-47).

103. Similar considerations led the Court to find a breach of Article 11 in *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, 2006. The case concerned the refusal to register the United Macedonian Organisation Ilinden ("Ilinden"), which was an association aiming to unite all Macedonians in Bulgaria on a regional and cultural basis and to achieve the recognition of the Macedonian minority in Bulgaria. The applicants alleged that the refusal of the courts to register Ilinden had been unjustified and the reason for that lay in the fact that its founders belonged to a minority. The Court has noted that exceptions to freedom of association must be narrowly interpreted, such that their enumeration is strictly exhaustive and their definition is necessarily restrictive (*Sidiropoulos and Others v. Greece*, 1998, § 38; *The United Macedonian Organisation Ilinden and Others v. Bulgaria*, 2006, § 56). For instance, the fact that an association asserts a minority consciousness cannot in itself justify an interference with its rights under Article 11 of the Convention (see *Sidiropoulos and Others v. Greece*, 1998, § 44; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, § 89).

104. In *Sagir and Others v. Greece*, 2025, the Court considered that the domestic courts' refusal to register the "Cultural Association of Turkish Women of the Prefecture of Xanthi", justified by the need to avoid confusion between the Muslim minority with Greek citizenship and a Turkish minority not acknowledged by the courts, constituted an interference with the applicants' right to freedom of association. Reiterating that the right to free self-identification is the "cornerstone" of international law governing the protection of minorities in general, the Court considered that there was no firm evidence that in choosing this name, the applicants' association opted for a policy that represented a real threat to public order or to democratic society. Then, the Court found that the association's name could not by itself justify the non-registration of the association. It had not been demonstrated that the restriction pursued a "pressing social need". There had, consequently, been a violation of Article 11 of the Convention.

105. In a democratic society based on the rule of law, ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, § 97). In this regard, the expression of separatist views and calls for autonomy or territorial changes do not in themselves amount to a threat to a country's territorial integrity and national security and cannot automatically justify a prohibition of its assemblies (*The United Macedonian Organisation Ilinden and Others v. Bulgaria*, 2006, § 76; see, *mutatis mutandis*, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, § 97).

106. On the other hand, States have considerable latitude to establish the criteria for participation in elections.[23] For example, in *Gorzelik and Others v. Poland* [GC], 2004, a refusal to create a legal entity which would have become entitled to stand for election could be regarded as being necessary in a democratic society where the individuals were otherwise not prevented from forming an association to express and promote the distinctive features of a minority. This case concerned the authorities' refusal to register an association characterising itself as an organisation of the Silesian national minority. They considered that the Silesians were not a national minority and registering the association as an "organisation of a national minority" would grant it electoral privileges which would place it at an advantage in relation to other ethnic organisations. The Grand Chamber accepted that the national authorities had not overstepped their margin of appreciation in considering that there had been a pressing social need at the moment of registration to regulate the free choice of an association to call itself an "organisation of a national minority", in order to protect the existing democratic institutions and election procedures in Poland. The refusal had not been disproportionate to the legitimate aims pursued as it was mainly concerned with the label which the association could use in law, rather than with its ability to act collectively in a field of mutual interest (§§ 103-106).

107. By contrast, more recently, the case of *Association of People of Silesian Nationality (in liquidation) v. Poland*, 2024, concerned the dissolution and ordering of the liquidation of the applicant association using "Silesian Nationality" in its title. In the absence of any concrete evidence to demonstrate that in choosing to call itself "the Association of People of Silesian Nationality", the applicant association opted for a policy that represented a real threat to public order or to a democratic society, the Court held that the submission based on the association's name and the wording of two provisions of its memorandum of association, which referred to "Silesian nationality", could not, by itself, justify the dissolution of the association (see, *mutatis mutandis*, *Ouranio Toxo and Others v. Greece*, 2005, § 41). Furthermore, the domestic authorities had not demonstrated that the dissolution of the applicant association pursued a "pressing social need". Thus, the Court has found a violation of Article 11 of the Convention (§§ 51-54).

108. The Court has also pointed out that, the consciousness of belonging to a minority and the preservation and development of a minority's culture cannot be said to constitute a threat to

[23] See under "Electoral Rights" below.

"democratic society", even though it may provoke tensions (*Association of People of Silesian Nationality (in liquidation) v. Poland*, 2024, § 40; *Ouranio Toxo and Others v. Greece*, 2005, § 40; *Sidiropoulos and Others v. Greece*, 1998, § 41). The emergence of tensions is one of the unavoidable consequences of pluralism, that is to say the free discussion of all political ideas. Accordingly, 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 political groups tolerate each other (*Ouranio Toxo and Others v. Greece*, 2005, § 40; see also *Petropavlovskis v. Latvia*, 2015, §§ 8-20 and 70, which concerned a leader of a protest movement advocating for the Russian-speaking community and against the Government's language policy, whose application for Latvian citizenship had been refused).

109. The case of *Ouranio Toxo and Others v. Greece*, 2005, § 40, concerned the local authorities who incited and participated in demonstrations against a political party defending the Macedonian minority living in Greece, and passivity of the police towards the incidents. The Court has found a violation of Article 11 as the public authorities failed to take the necessary measures for the protection of the party's premises and to take effective investigative measures in the wake of the incidents to determine responsibility (§§ 43-44).

110. As to the second main component of Article 11 (freedom of assembly[24]), the Court has noted that Article 11 of the Convention encompasses the right to choose the time, location and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11 of the Convention. Therefore, in cases where the time and place of the assembly are crucial to the participants, an order to change these elements such as in *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, where it took the form of allowing members of an association whose aim was to unite all Macedonians within Bulgaria to attend the official ceremonies held at the same place and time on the occasion of the same historical events, provided that they did not carry their posters and did not hold separate demonstrations, may constitute an interference with their freedom of assembly under Article 11 of the Convention (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, 2001, §§ 79-80; see also *The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria*, 2005, § 103, concerning the banning by the authorities, each year, of organising meetings at sites in Pirin Macedonia to commemorate certain historical events).

IX. Property Rights[25]

Article 1 of Protocol No. 1 – Protection of property

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

111. The Court has examined complaints regarding the rights of the minorities within the scope of Article 1 of Protocol No. 1 in cases concerning pension rights, properties of religious-minority foundations as well as the rights of indigenous people with regard to reindeer herding, hunting and fishing.

[24] For further details see the Guide on Article 11 – Freedom of assembly and association.

[25] For the general principles concerning the right to property see the Guide on Article 1 of Protocol No. 1 – Protection of property. This Chapter reviews property cases of most relevance to the rights of minorities.

A. Pension rights[26]

112. The Court has applied Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 in a case about the refusal to recognise the validity of a Roma marriage for purposes of establishing an entitlement to survivor's pension. In the case of *Muñoz Díaz v. Spain*, 2009, where the applicant, a Spanish national belonging to the Roma community, entered into a marriage solemnised in accordance with Roma custom and tradition and as recognised by that minority community, no other marriage than the one under canon law was recognised by the State. When the possibility to enter a civil marriage arose, the applicant did not enter in such, as she believed in good faith that her marriage was valid before the State. This belief was strengthened by several administrative acts that de facto recognised the marriage. The Court held that the force of the collective beliefs of a community that is well-defined culturally cannot be ignored, observing an emerging international consensus within the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle: not only for the purpose of safeguarding the interests of the particular minority groups, but to preserve a cultural diversity that is of value to the whole community (§§ 59-60). The Court observed that the applicant's particular social and cultural situation had not been taken into account when assessing her good faith. In that connection it noted that, under the Framework Convention, the States were required to take due account of the specific conditions of persons belonging to national minorities. Thus, the Court found it disproportionate for the Spanish State, which had issued the applicant and her Roma family with a family record book and collected social-security contributions from her Roma husband for over nineteen years, to refuse to recognise the effects of the Roma marriage when it came to the survivor's pension. Therefore, there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 to the Convention (§§ 51-71).

B. Foundations established by religious minorities

113. The Court has examined a large number of cases brought by foundations established by religious minorities in Türkiye under Article 1 of Protocol No. 1 (see, for the recapitulation, *Arnavutkoy Greek Orthodox Taksiarhis Church Foundation v. Türkiye*, 2022, § 43). These non-Muslim minority foundations were established during the Ottoman era and operated in accordance with the Lausanne Treaty, providing public services for minorities. After the proclamation of the Republic, religious-minority foundations obtained legal personality with the Foundations Act (Law No. 2762) of 1935, requiring them to file a declaration indicating their aims and an inventory of their immovable property. Under the new Foundations Act (Law No. 5737) of 2008, the Directorate General of Foundations, a public establishment, was tasked with representing, managing and administrating defunct (fused) foundations and their properties. In this context, the applicant foundations have lodged complaints with the Court, mainly alleging that the authorities had deprived them of their property rights by ordering the disputed properties to be registered under the management of the Directorate General for Foundations, annulling the applicant foundations' title deeds for those properties, or refusing to register the properties in their names, in such a way without providing for adequate compensation.

114. The Court has found that the declarations, submitted in 1936 by religious minority foundations, constituted their founding acts. Furthermore, annulling the title deeds of these foundations, even though they were lawfully acquired after their declarations had been filed in 1936, was not compatible with the requirement of foreseeability (*Fener Rum Erkek Lisesi Vakfı v. Turkey*, 2007, § 57; *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey*, 2008, § 90).

[26] For further information, see the Guide on Social rights.

115. In certain cases, the Court has found a violation of Article 1 of Protocol No. 1, because:

- the annulment of the applicant foundation's title to the property in question, pursuant to case-law adopted sixteen and twenty-two years, respectively, after its acquisition, was not foreseeable for the applicant foundation and, thus, had not complied with the requirement of lawfulness (*Fener Rum Erkek Lisesi Vakfı v. Turkey*, 2007, §§ 50-60, which involved a foundation established by a religious minority, aimed at providing educational facilities for the Greek Orthodox High School; see also, the cases where the Court has reached a similar conclusion in *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey*, 2008, § 32 and *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey*, 2008, § 30, concerning the annulment of the title of Armenian foundations respectively forty-seven years and forty years after their acquisition);
- concerning the deprivation of property in question, a fair balance has not been struck between the protection of property and the requirements of the general interest, as a result of which the applicant had to bear a disproportionate and excessive burden (*Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey*, 2008, where the applicant, Fener Rum Patrikliği (the Ecumenical Patriarchy), a church representing the Orthodox minority in Türkiye, acquired a piece of land, and a foundation of the Orthodox minority (the Orphanage) was given the use of this property);
- the domestic courts' refusal to register the immovable properties in the applicant foundation's name in the land registry was incompatible with the principle of lawfulness and could not be considered sufficiently foreseeable for the applicant foundation, which had been in possession of the properties continuously for over twenty years (*Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey (no. 2)*, 2009, §§ 51-60, which involved a Greek Orthodox church foundation);
- the domestic courts' decision failed to clearly and fairly establish the facts giving rise to the litigation, and provide reasons for its approach, even though the outcome of the dispute depended on it (*Arnavutkoy Greek Orthodox Taksiarhis Church Foundation v. Türkiye*, 2022, §§ 45-46, concerning the property of a religious foundation for which the applicant had no proper title but which was mentioned in its founding document);
- the obligation to provide judicial procedures with the requisite procedural guarantees has not been complied with (*Midyat Mor Gabriel Monastery Foundation v. Türkiye*, 2023, §§ 63-67, which involved the judicial authorities' refusal to order the registration of land in the applicant foundation's name, despite the applicant's claim of its uninterrupted possession for a long period, and that the land has been part of the cemetery of the Assyrian community living in the region).

116. In some cases, the Court has ruled that the only adequate means of recovery for the applicants were the restitution of these assets and their registration in the land register in their name. In *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vafki v.Turkey (no. 2)*, 2009, § 68, and *Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (just satisfaction), 2010, §§ 34-35, the Court gave particular consideration to the specific characteristics of the properties belonging to religious minority foundations. These have included the cemetery of the Greek community on the island of Bozcaada, a chapel, a former monastery, and the piece of land on the island of Büyükada.

C. Rights pertaining to the traditional lifestyle of indigenous peoples

117. The Court and the Commission have dealt with cases involving the Sami as indigenous people and members of a minority group, in particular, examining their rights related to reindeer herding, hunting and fishing under Article 1 of Protocol No. 1. In such cases lodged against Sweden, Norway

and Finland, the applicants were Finnish nationals of Sami origin, Swedish Sami villages or associations promoting Sami culture and their rights.

118. In this context, the European Commission of Human Rights (Commission) has declared several cases inadmissible as manifestly ill-founded:

- *G. and E. v. Norway* (dec.), 1983, where, the Commission examined, for the first time, a case which concerned the rights of Sami people. In this case, two applicants of Sami origin, a reindeer shepherd and a fisherman and hunter, complained under Article 1 of Protocol No. 1 that the construction of a hydroelectric power station in the valley where the Norwegian Sami intended to live and work would eventually put parts of the valley under water and that the taking away of this land would also affect their way of life. The Commission found that the applicants had in no way substantiated that they had any property rights or claims, as guaranteed by Article 1 of Protocol No. 1 to the land in question.
- *Östergren and Others v. Sweden* (dec.), 1991, which concerned reindeer husbandry, hunting and fishing rights for Sami who were denied membership into a Sami village and were informed that they had no land rights in the region. The applicants claimed that they were holders of hunting and fishing rights by reason of immemorial usage and further complained that they have been unjustly deprived of their customary rights to reindeer breeding, hunting and fishing, contrary to Article 1 of Protocol No. 1. The Commission considered that the applicants were not deprived of any property right under of Article 1 of Protocol No. 1, and indicated that if any deprivation of property occurred it would have been at the time of the enactment of the 1971 Reindeer Herding Act. However, the applicants had not complied with the time limit for lodging an application with the Commission.
- *Könkämä and 38 Other Sami Villages v. Sweden* (dec.), 1996, where the applicants, 39 Swedish Sami villages, claimed that they had exclusive hunting and fishing rights in the land and waters above the cultivation line and in the reindeer grazing mountains. It is noted under the relevant domestic law that reindeer herding, hunting and fishing are fundamental elements of the Sami culture. Under the Reindeer Herding Act, a person of Sami origin has a right based on custom from time immemorial to use land and waters in designated areas of northern Sweden for reindeer herding, based on custom of time immemorial. With the enactment of the Reindeer Herding Ordinance a new system of licensing hunting and fishing rights to the public in land used by Sami was established. The applicants complained that this system, which was implemented through regional rules by the County Administration, constituted an infringement of their exclusive rights to hunting and fishing in the area and thus violated their rights under Article 1 of Protocol No. 1 to the Convention. Considering that the exclusive hunting and fishing rights claimed by the applicant Saami villages in the present case could be regarded as "possessions" within the meaning of Article 1 of Protocol No. 1, the Commission has not addressed these complaints or determined whether the Sami villages were holders of exclusive hunting and fishing rights, as the applicants had not properly exhausted domestic remedies.
- *From v. Sweden* (dec.), 1998, which concerned the issue of double registration of hunting licences over a land. The applicant complained that the registration of his property as part of the elk-hunting area of the relevant Sami village had violated his property rights, including his right of ownership and his hunting right. The Commission noted that under the Reindeer Herding Act, Sami's right to hunt, which was connected with their right to herd reindeer, in the areas of northern Sweden where the applicant's property had been situated was considered to be based on custom from time immemorial. The Commission stated, "it is in the general interest that the special culture and way of life of the Sami be respected, and it is clear that reindeer herding and hunting are important parts of that culture and way of life". Accordingly, the Commission found that the challenged decision was taken in the general interest. Moreover, noting that the applicant was also licensed to hunt on the

property and having regard to the authorities' margin of appreciation, the Commission has not considered the decision to be disproportionate to the requirements of the general interest.

119. In a case against Finland, the Court addressed the granting of traditional Sami fishing rights to other local residents. *Johtti Sapmelaccat r.y. and Others v. Finland* (dec.), 2005, involved five applicants, one of whom was an association dedicated to promoting Sami culture, while the others were Finnish nationals of Sami origin. The applicants, who were not landowners themselves, enjoyed fishing rights based on custom from time immemorial in several municipalities in Finland. Their rights were constitutionally protected and entitled them to fish in the State-owned water-areas of these municipalities. In 1997, the Fishing Act was amended and public fishing rights were granted to other people living permanently in those municipalities. The applicants complained under Article 1 of Protocol No. 1 that the 1997 amendment of the Fishing Act weakened the legal position of landless Sami people with the result that their fishing rights no longer enjoyed the constitutional protection of property. The applicants further complained, under Article 8 of the Convention, that their right to respect for their private and family life had been violated since the Sami people, as a national minority and an indigenous people, were entitled to request that their special way of life, which included fishing as part of the Sami tradition, was respected and protected by Article 8. The Court observed while the precise scope of the traditional fishing and other rights belonging to the Sami population was not determined at the relevant time, the general aim of the 1997 amendment was to protect the rights of the Sami, while ensuring the rights of other local residents as well. The applicants had not appreciably shown the adverse impact of the 1997 amendment of the Fishing Act on their concrete possibilities to exercise their traditional fishing rights. The Court was not satisfied that there had been an interference with their property rights or their Article 8 rights. Therefore, it declared the application inadmissible.

120. The rights of Sami were examined also in *Handölsdalen Sami Village and Others v. Sweden* (dec.), 2009, concerning in particular their right to use private land for grazing reindeers during winter. In Swedish law reindeer herding rights were regulated by the 1977 Reindeer Husbandry Act, which gave the Sami the right to use land and water for their own maintenance and that of their reindeer. The right might only be exercised by the members of a Sami village. Such villages were both geographical grazing areas and economic entities. They did not have any public legal status (see also, *Könkämä and 38 Other Sami Villages v. Sweden*, 1996). Under Section 3 of the Reindeer Husbandry Act, the winter grazing might be conducted in areas outside the reindeer grazing mountains, which was the core area of the Sami, where, since time immemorial, such reindeer grazing has been carried out during certain times of the year.

121. The case originated in proceedings before Swedish courts that were initiated by a large number of private landowners, alleging that the Sami villages had no right to graze on their land without previously concluding a valid contract with the affected landowners. The applicants, four Swedish Sami villages, complained that their right to use land for winter grazing, constituted a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, and was violated, as fair balance had not been struck between the demands of the public and the rights of the Sami villages. The Court determined that the right to winter grazing on private lands had not constituted an "existing possession" or an "asset" under Article 1 of Protocol No. 1 given that no legitimate expectation of obtaining effective enjoyment of such right could be said to arise where there was a dispute as to the correct interpretation and application of domestic law and the applicants' submissions were subsequently rejected by the Swedish courts. It followed that Article 1 of Protocol No. 1 was not applicable to the present case (§§ 49-56).

122. The applicants further complained under Article 6 § 1 that the required burden of proof was virtually impossible to meet, as specific evidence on the frequency and location of the reindeer grazing during several hundred years was required, and the applicants were placed at a substantial disadvantage vis-à-vis the opponent landowners and could not be considered therefore to have had a fair hearing (§ 41 of the decision). The Court held that the domestic courts' application of national law

and their findings in regard to evidence were fair, thus, rejected this part of the application as being manifestly ill-founded (§§ 57-66). However, the complaints of the applicants that they had not had effective access to court and that the length of national proceedings had been unreasonable were found admissible (§§ 70 and 75). In the judgment *Handölsdalen Sami Village and Others v. Sweden*, 2010, the Court found no violation under Article 6 § 1 of the Convention in regard to effective access to court (§ 59). However, it found a violation under Article 6 § 1 in regard to the length of the proceedings, which overall duration – 13 years and 7 months – indicated that the proceedings were not sufficiently expeditious, along unnecessary delays, thereby being excessive and failed to meet "a reasonable time" requirement (§§ 65-66).

123. Finally, the Court examined the complaints made by another indigenous group in the case of *Chagos Islanders v. the United Kingdom* (dec.), 2012. The applicants were natives of, or descendants of natives of the Chagos Islands – sometimes referred to as "Ilois" or "Chagossians" - who had been expelled from or barred from returning to their homes by the Government to facilitate the construction of a military base, and thus, claimed to suffer miserable conditions on being uprooted, having lost their homes and livelihoods. The Court found that the applicants lacked victim status, given that they had accepted a sum of compensation in civil proceedings for the claims of breaches of the rights invoked in the present case, and thus effectively renounced bringing any further claims (§ 81). The argument that not all the applicants had signed the waiver forms in the settlement or had not realised that the settlement was final was rejected, as they had been represented by lawyers in proceedings which were widely known at the time (§§ 79-80). As to the applicants who were not born at the time of the settlement, the Court declared they had never had a home on the islands and could therefore have no claim to victim status arising out of the expulsions and their immediate aftermath (§ 82). Given the absence of appearance of the applicants' having been deprived of the benefit of a final, enforceable decision and of indication of arbitrariness or unfairness in the proceedings before the national courts which could be construed as a denial of access to court, the Court declared the application inadmissible (§§ 85-87).

X. Education[27]

Article 2 of Protocol No. 1 – Right to education

> "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."

Article 14 of the Convention – Prohibition of discrimination

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 – General prohibition of discrimination

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

[27] See the Guide on Article 2 of Protocol No. 1 – Right to education, the Guide on Article 14 and Article 1 of Protocol No. 12 – Prohibition of discrimination, and the Guide on Social rights.

124. The right to education, including that of national and ethnic minorities, is guaranteed under Article 2 of Protocol No. 1 to the Convention. The said provision also guarantees a right of access to educational institutions existing at a given time (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* ("the Belgian linguistic case"), 1968, § 4).

125. In the context of the right to education, the Court has reiterated that, although individual interests must on occasion be subordinated to those of a group, a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (*Džibuti and Others v. Latvia*, 2023, § 126).

126. Where a State applies different treatment in the implementation of its obligations under Article 2 of Protocol No. 1, an issue may arise under Article 14 of the Convention.[28] Discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations. A difference of treatment is devoid of any "objective and reasonable justification" where it does not pursue a "legitimate aim" or there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (*Oršuš and Others v. Croatia* [GC], 2010, § 156). However, Article 14 of the Convention does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them: indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (*D.H. and Others v. the Czech Republic* [GC], 2007, § 175). While Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of ethnic origin as compatible with the Convention (*Oršuš and Others v. Croatia* [GC], 2010, § 149).

127. The Court has emphasised the importance for States to consider the vulnerable and disadvantaged position of the Roma as regards the protection of their rights which, in certain circumstances, may also entail a positive obligation under the Convention. The Court has considered such a requirement for special protection to also extend to the sphere of education, reiterating that, as a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. In addition, particular attention is warranted where minor children are concerned, for which the right to education is of paramount importance (*D.H. and Others v. the Czech Republic* [GC], 2007, § 182; *Oršuš and Others v. Croatia* [GC], 2010, § 147). In taking steps to achieve the social and educational integration of the Roma, States must ensure that these are attended by safeguards that would ensure sufficient regard to their special needs as members of a disadvantaged group (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 205-207; *Oršuš and Others v. Croatia* [GC], 2010, §§ 180-182).

128. In consideration of Roma's vulnerability, a required difference in treatment to correct inequality may make it necessary for States to specifically focus on their needs, and for the competent authorities to facilitate the enrolment of Roma children, even in cases where some of the requisite administrative documents were missing (*Sampanis and Others v. Greece*, 2008, § 86). The Court has accepted that a State's decision to retain a special-school system was motivated by the desire to find a solution for children with special educational needs (*D.H. and Others v. the Czech Republic* [GC], 2007, § 198). However, the mere enrolment of Roma children in schools does not suffice for a finding of compliance with Article 14 of the Convention taken together with Article 2 of Protocol No. 1 since this enrolment must take place in satisfactory conditions. Having acknowledged that the misplacement of Roma children in special schools has a long history across Europe, the Court has shared the concerns of other Council of Europe institutions regarding the more basic curriculum in special schools for Roma and the segregation resulting from this system (*D.H. and Others v. the Czech Republic* [GC], 2007, § 198; *Horváth and Kiss v. Hungary*, 2013, § 115; *Salay v. Slovakia*, 2025, § 114). Similarly, the Court has

[28] For further details see the Key Theme on Article 2 Protocol No. 1 – Discrimination in access to education.

considered that the temporary placement of children in a separate class on the ground that they lack an adequate command of the language was not, as such, automatically in breach of Article 14 (*Oršuš and Others v. Croatia* [GC], 2010, § 157). Consequently, schooling arrangements for Roma children must be attended by safeguards that ensure that the State takes into account their special needs (*D.H. and Others v. the Czech Republic* [GC], 2007, § 207; *Sampanis and Others v. Greece*, 2008, § 103; *Salay v. Slovakia*, 2025, § 113). The decision must be transparent and based on clearly defined criteria, not only ethnic origin (ibid., § 89; *Oršuš and Others v. Croatia* [GC], 2010, § 182). Lastly, such measures cannot be regarded as reasonable and proportionate where they result in an education which compounds the difficulties of Roma children and compromises their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population (*D.H. and Others v. the Czech Republic* [GC], § 207).

129. The Court has found a violation of Article 14 in conjunction with Article 2 of Protocol No. 1 in a number of cases concerning the right to education of Roma pupils:

- *D.H. and Others v. the Czech Republic* [GC], 2007, §§ 196-210, which concerned the disproportionate number of Roma children placed in special schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population (the first judgment where the Court found a violation of Article 14 in relation to racial discrimination in education);
- *Sampanis and Others v. Greece*, 2008, §§ 83-96, where Roma children were denied access to school before being assigned to special classrooms in an annex to the main primary school buildings;
- *Oršuš and Others v. Croatia* [GC], 2010, §§ 158-185, which concerned the placement of Roma children in Roma only classes owing to their allegedly poor command of the Croatian language;
- *Sampani and Others v. Greece*, 2012, §§ 90-105, which concerned the failure of the authorities to integrate Roma children into normal schools;
- *Lavida and Others v. Greece*, 2013, §§ 64-73, which concerned the failure of the authorities to integrate Roma children in normal schools;
- *Elmazova and Others v. North Macedonia*, 2022, §§ 68-78, which concerned the segregation of Roma pupils in State-run primary schools;
- *Szolcsán v. Hungary*, 2023, §§ 52-59, which concerned the discrimination of Roma pupils on account of segregation in a State-run primary school attended almost exclusively by Roma children;
- *Salay v. Slovakia*, 2025, §§ 96-116, which concerned the enrolment of a Roma child in a special class for children with deficiencies, and the impossibility for the applicant to return to the ordinary system even though the deficiencies had been ruled out.

In all of these cases the Court found that the different treatment to which Roma children had been subjected, although unintentional, had constituted a form of indirect discrimination.

130. Moreover, the Court has reiterated in a number of occasions that, even in the absence of any discriminatory intent on the part of the State, the authorities are under a positive obligation to take positive effective measures against segregation (*Lavida and Others v. Greece*, 2013, §§ 72-73; *Elmazova and Others v. North Macedonia*, 2022, §§ 77-78; in *Szolcsán v. Hungary*, 2023, §§ 55-59; *Salay v. Slovakia*, 2025, § 114). The Court also considers in a similar context that the delays and the non-implementation of appropriate desegregating measures cannot be considered as having had an objective and reasonable justification (*X and Others v. Albania*, 2022, § 87). Accordingly, in *X and Others v. Albania*, 2022, the Court found a violation of Article 1 of Protocol No. 12 to the Convention as the respondent State had failed to implement swift and comprehensive desegregation measures in

an elementary school which was attended almost exclusively by children of the Roma and Egyptian minorities (see also, *Szolcsán v. Hungary*, 2023). In *Horváth and Kiss v. Hungary*, 2013, a case concerning the systemic placement of Roma children in special schools in Hungary, the Court concluded that, in the context of the right to education of members of groups which suffered past discrimination in education with continuing effects, structural deficiencies called for the implementation of positive measures in order, inter alia, to assist the applicants with any difficulties they encountered in following the school curriculum. Therefore, some additional steps were needed in order to address these problems, such as active and structured involvement on the part of the relevant social services (§ 104; see *Oršuš and Others v. Croatia* [GC], 2010, § 177, concerning the poor school attendance of Roma children and their high drop-out rate; *Salay v. Slovakia*, 2025, §§ 112-15, concerning the systemic placement of Roma children in special schools in Slovakia). For a recapitulation of general principles concerning discrimination in access to education in the context of ethnic origin, see *Horváth and Kiss v. Hungary*, 2013, §§ 101-108.

131. Furthermore, Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected. However, the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be (*Belgian linguistic case*, § 3 of "the Law" part).

132. The Court has examined multiple cases concerning the intersection of right to education of minorities and their language rights (see, for instance, *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, and *Ádám and Others v. Romania*, 2020; for further details, see the next Chapter on "Language Rights").

XI. Language Rights

Article 5 § 2 of the Convention – Right to liberty and security

"2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Article 6 § 3 of the Convention – Right to a fair trial

"3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) ...
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) ...
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

Article 10 of the Convention – Freedom of expression

"1. 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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

Article 14 of the Convention – Prohibition of discrimination

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 – General prohibition of discrimination

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

Article 2 of Protocol No. 1 – Right to education

"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."

Article 3 of Protocol No. 1 – Right to free elections

"The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

133. The language used by an individual necessarily forms part of that person's ethnic identity, which the Court has already found to constitute an essential aspect of an individual's private life (*Ciubotaru v. Moldova*, 2010, § 53; *Ádám and Others v. Romania*, 2020, § 94; *Mile Novaković v. Croatia*, 2020, § 48).

A. In the context of education[29]

134. Although Article 2 of Protocol No. 1 does not specify the language in which education must be conducted in order that the right to education should be respected, the Court recognised that the right to education would be meaningless if it did not imply in favour of its beneficiaries, the right to be educated in the national language or in one of the national languages, as the case may be (*Belgian linguistic case*, 1968, § 3 of "the Law" part; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 137; *Ukraine v. Russia (*re *Crimea)* [GC], 2024, § 1159; *Valiullina and Others v. Latvia*, 2023, § 122). In this regard, relying on the preparatory work, the Court held that, neither could Article 14, read in conjunction with Article 2 of Protocol No. 1, be interpreted as conferring on the children or their parents the right to obtain instruction in the language of their choice (*Belgian linguistic case*, § 2, 3, 6 and 11).

135. The right to education guaranteed by the first sentence of Article 2 of the Protocol No. 1 by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals. It goes without saying that such regulation must never injure the substance of the right to education nor conflict with other rights enshrined in the Convention. The Convention therefore implies a just balance between the protection of the general interest of the community and the respect due to fundamental human rights while attaching particular importance to the latter (*Belgian linguistic case*, 1968, § 5 of "the Law" part). In order to ensure that the restrictions that are imposed do not curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness, the Court must satisfy itself that they are foreseeable for those concerned and pursue a legitimate aim. However, unlike the position with respect to Articles 8 to 11 of the Convention, it is not bound by an exhaustive list of 'legitimate aims' under Article 2 of Protocol No. 1. Furthermore, a limitation will only be compatible with Article 2 of Protocol No. 1 if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 140; *Leyla Şahin v. Turkey* [GC], 2005, § 154). Although the final decision as to the observance of the Convention's requirements rests with the Court, the Contracting States enjoy a certain margin of appreciation in this sphere. This margin of appreciation increases with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large

[29] See Chapter on "Education" above. For further details see the Guide on Article 2 of Protocol No. 1 – Discrimination in access to education.

(*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 140; *Ukraine v. Russia (re Crimea)* [GC], 2024, § 1159).

136. The rights of persons belonging to national minorities to use their minority language and receive education in this language, as well as the State's corresponding obligation to protect and encourage the development of minority languages, are among the principles safeguarded by the international instruments on the matter (*Ádám and Others v. Romania*, 2020, § 94).[30] The member States which have ratified the Framework Convention have undertaken to preserve the essential elements of the identity of persons belonging to national minorities, including their language, to foster those persons' knowledge of their language, and to recognise their right to learn in their language (*Valiullina and Others v. Latvia*, 2023, §§ 87 and 134).

137. Two main lines of case-law can be distinguished: the first concerning national minorities in general[31] and the second relating more specifically to Roma minorities.[32] It is to be noted that in addition to Article 2 of Protocol No. 1, the minorities' right to receive education in their minority language may raise issues under Article 8, Article 10, Article 14 and Article 1 of Protocol No. 12 to the Convention.

138. The leading case in which the Commission and the Court addressed discrimination on grounds of language is the *Belgian linguistic case*, 1968. This case involved certain aspects of access to education in the mother tongue of a minority group, which was also one of the national languages. In particular, it concerned French-speaking children residing in a Dutch-speaking region being unable to follow classes in French, whereas Dutch-speaking children living in French-speaking regions had access to classes taught in Dutch. The State would not establish or subsidise, in the Dutch unilingual region, primary school education in which French was employed as the language of instruction. The Court has examined the legal and administrative measures governing access to French-language education at the six communes and found that the measure in question was not imposed in the interest of schools, for administrative or financial reasons, but proceeded solely from considerations relating to language. In this regard, such a measure was not justified as it involved elements of discriminatory treatment of certain individuals and was found to be incompatible with the exercise of their right to education. There had thus been a violation of Article 2 of Protocol No. 1 on a narrow ground, taken together with Article 14 of the Convention (*Belgian linguistic case*, 1968, § 32 of "the Law" part). However, the Court found no violation as regards a certain part of the legislation. In its view, the legislation itself did not impose the separation of parents and their children. Instead, this separation resulted from the choice of the parents who placed their children in schools outside the Dutch-speaking region, solely to avoid having them educated in Dutch. In this connection, the Court emphasised that the legislation had not prevented the families from making use of independent and private education in French in Dutch-speaking regions. Therefore, it concluded that the measures adopted in this particular aspect by the Belgian legislature were not excessively disproportionate to the public interest being pursued and did not amount to discrimination in violation of Article 14 of the Convention read in conjunction with Article 2 of the Protocol No. 1 or with Article 8 of the Convention (*Belgian linguistic case*, 1968, § 7 of "the Law" part).

139. In *Cyprus v. Turkey* [GC], 2001, the applicant Government argued that the Greek Cypriot children living in certain regions of northern Cyprus had been denied secondary education in Greek language

[30] In this regard, the Court refers to the Council of Europe instruments, specifically the Framework Convention and the European Charter for Regional or Minority Languages.

[31] See, for example, "*the Belgian linguistic case*", 1968, §§ 3-6 of "the Law" part); *Cyprus v. Turkey* [GC], § 277; and *Catan and Others v. the Republic of Moldova and Russia* [GC], § 137.

[32] The cases concerning Roma are explored in the previous Chapter on "Education". For example, *D.H. and Others v. the Czech Republic* [GC], §§ 196-210; *Oršuš and Others v. Croatia* [GC], §§ 158-185; *Horváth and Kiss v. Hungary*, §§ 101-108; as well as, most recently, *Elmazova and Others v. North Macedonia*, 2022, §§ 68-78; *X and Others v. Albania*, 2022, §§ 81-87, and *Szolcsán v. Hungary*, 2023, §§ 52-59.

and were therefore denied the opportunity of being educated in accordance with Greek-Cypriot religious and philosophical convictions. The Court first held that, since it was open to children, on reaching the age of 12, to continue their education at a Turkish or English-language school in the north, that there was no denial of the right to education in the strict sense. However, it found a violation of Article 2 of Protocol No. 1 for the following reasons. The children of Greek-Cypriot parents in Northern Cyprus who had received primary education in Greek language and wished to pursue a secondary education through the medium of the Greek language were obliged to transfer to schools in the south, this facility being unavailable in the "*Turkish Republic of Northern Cyprus*" (the "TRNC") ever since the decision of the Turkish-Cypriot authorities to abolish it. If they wished to be educated in accordance with their language and culture, they were obliged to go to school in the south of the country. The Court held that "having assumed responsibility for the provision of Greek-language primary schooling, the failure of the "TRNC" authorities to make continuing provision for it at the secondary-school level must be considered in effect to be a denial of the substance of the right at issue". The Court concluded that offering secondary education in the south, aligned with the linguistic tradition of the enclaved Greek Cypriots, did not adequately meet the requirements set forth in Article 2 of Protocol No. 1 and found a violation (*Cyprus v. Turkey* [GC], 2001, §§ 273-280). In this respect, the Court employed the principles established in *the Belgian Linguistic case*, with one exception: the Court nuanced its approach, stating that while Article 2 of Protocol No. 1 typically did not safeguard language rights or specify the language of instruction, if the State had deliberately provided primary education in another language, then it bore a specific obligation to maintain education in that language at the secondary level (*ibid*., § 278).

140. The case of *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, involved the forced closure of schools teaching in Latin script in connection with the language policy of separatist authorities and the harassment and intimidation of pupils for wishing to be educated in their national language. The Court emphasised the fundamental importance of primary and secondary education for each child's personal development and future success. It further reiterated that the right to education would be meaningless if it did not entail the right to be educated in the national language (§§ 137 and 144). The State which exercised effective control during the period in question over the relevant administration, regardless of the fact that it intervened neither directly nor indirectly in that administration's language policy, engaged its responsibility as regards the interference with the right to education (§ 150). The Court assessed whether the States had fulfilled their obligation to take appropriate and sufficient measures to secure the applicants' rights under Article 2 of Protocol No. 1. Accordingly, it concluded that the Republic of Moldova did not breach Article 2 of Protocol No. 1 but found a violation of the same provision in respect of the Russian Federation (§§ 148 and 150).

141. In *Ádám and Others v. Romania*, 2020, concerning ethnic Hungarians who attended school in their mother tongue in Romania, the Court has addressed the rights of national minorities to use their minority language and receive education in this language (§ 94). The applicants, who were ethnic Hungarians, complained that they had to take more exams than ethnic Romanians (two Hungarian tests) over the same number of days, and that the Romanian exams had been difficult for them as non-native speakers. For this reason, they claimed that ethnic Hungarian pupils had less time than Romanian pupils to prepare for their exams or to simply rest between them, and thus less chance of success therein. The Court could not find that the schedule of the baccalaureate, viewed as a whole, imposed an excessive burden on the applicants, or that they had had on average significantly less time to rest than their Romanian peers. Given the particular circumstances of the case, the Court was not convinced that the inconvenience suffered by the applicants had been so significant as to reach the threshold of Article 1 of Protocol No. 12 to the Convention. The Court further noted that the fact that pupils in the applicants' situation had to pass two more exams than pupils studying in Romanian was the direct and inevitable consequence of the applicants' voluntary choice to study in a different language and the State offering them such an opportunity. In this regard, the Court observed that while national law recognised a right, it did not impose an obligation on pupils belonging to a national

minority to study in their mother tongue (§ 101). The Court therefore concluded there had been no violation of Article 1 of Protocol No. 12 to the Convention (§§ 107-108).

142. Furthermore, the cases of *Valiullina and Others v. Latvia*, 2023, and *Džibuti and Others v. Latvia*, 2023, concerned the implementation of an education reform adopted in Latvia in 2018 - namely legislative amendments increasing the proportion of subjects taught in the only State language, Latvian, and reducing the use of Russian as the language of instruction. The Court has found no violation of Article 14 taken together with Article 2 of Protocol No. 1 (*Valiullina and Others v. Latvia*, 2023, § 215; *Džibuti and Others v. Latvia*, 2023, § 151).

143. The Court reiterated that there was not sufficient international material to warrant the conclusion that the right to education as enshrined in Article 2 of Protocol No. 1 to the Convention included the right to access educational institutions in a language of one's choice. In other words, the right enshrined by Article 2 of Protocol No. 1 did not include the right to access education in a particular language; it guaranteed the right to education in one of the national languages or official languages of the country concerned (*Valiullina and Others v. Latvia*, 2023, §§ 134-135).

144. However, a balance has to be sought between proficiency in the official language of the State and proficiency in minority languages (*Valiullina and Others v. Latvia*, 2023, §§ 210-212 and 134). The Council of Europe instruments expressly recognised that the protection and encouragement of minority languages should not be to the detriment of official languages and the need to learn them (*Ádám and Others v. Romania*, 2020, § 28; *Valiullina and Others v. Latvia*, 2023, § 133). The Court considered that the States have a wide margin of appreciation in organising their education systems, particularly as regards the language of instruction. The Court observed that the principle of instruction in a minority language has been recommended by some international bodies: however, given that the Framework Convention has not been signed and/or ratified by all member States, the principle of instruction in a minority language was far from being the rule among the member States of the Council of Europe (*Valiullina and Others v. Latvia*, 2023, § 134; *Džibuti and Others v. Latvia*, 2023, § 145).

145. The Court went on to hold that the Government had provided objective and reasonable justification for the need to increase the use of Latvian as the language of instruction in the education system in Latvia, in the case concerning public schools, in view of the underlying aim of protection of the rights of others and protection of the democratic order of the State, as well as the need to improve proficiency in the State language in Latvia (*Valiullina and Others v. Latvia*, 2023, §§ 195-201). The Court has also noted, as another legitimate aim, the principle of unity of the education system established by the Constitutional Court of Latvia in order to facilitate equal access for pupils to the State education system and, from a broader perspective, the need to eliminate the consequences of the segregation in education that had existed under the Soviet regime (*Valiullina and Others v. Latvia*, 2023, § 201). The Court considered that its conclusions reached in *Valiullina and Others*, §§ 204-214, in relation to the language of instruction in public schools, were fully relevant to the second case concerning private schools (*Džibuti and Others v. Latvia*, 2023, §§ 140 and 149). More recently, the Court extended the same standards established in these cases regarding primary and secondary education to the pre-school level (*Djeri and Others v. Latvia*, 2024, §§ 113-119, 151 and 166, concerning the use of the State language and found no violation of Article 14 taken together with Article 2 of Protocol No. 1 as regards the second-stage of pre-school education).

146. In *Georgia v. Russia (IV)*, 2024, the Court examined the denial of the right to education in one of the national languages in the context of an armed conflict between Georgia and Russia in August 2008 (see also *Georgia v. Russia (I)* [GC], 2014, §§ 236-237, concerning primarily the expulsion of Georgian nationals from Russia, where the Court found not sufficiently substantiated the complaint under Article 2 of Protocol No. 1 that the closure of Russian schools in Georgia had removed Georgian pupils' access to education in Russian, and thus found no violation of that Article). The complaint in *Georgia v. Russia (IV)*, 2024, concerned the denial of the right to education in the Georgian language to ethnic Georgians living in Abkhazia and South Ossetia, which, allegedly, did not pursue a legitimate aim and

which situation had been made even worse with the process of "borderisation" because of restrictions on freedom of movement into and out of Abkhazia and South Ossetia *Georgia v. Russia (IV)*, 2024, § 74). The Court relied on the *Belgian linguistic case*, 1968, to reiterate the general principles that the right to education would be meaningless if it did not imply in favour of its beneficiaries the right to be educated in the national language or in one of the national languages, as the case may be, but that it may be subject to limitations, provided that there is no injury to the substance of the right (*Georgia v. Russia (IV)*, 2024, §§ 76-77).

147. Whereas the Court noted a systemic replacement of Georgian by Russian as the language of instruction in schools in Abkhazia and South Ossetia, as demonstrated by various international materials, it stressed that the critical question was whether Georgian could be considered to be one of the official languages in Abkhazia and/or South Ossetia. In that regard, the Court observed that, although it was not disputed that, according to the "legislation" of the two breakaway regions, only Abkhaz and Russian were the official languages in Abkhazia and Ossetian and Russian in South Ossetia, the overwhelming majority of the international community (including all members of the Council of Europe) recognised Abkhazia and South Ossetia as an integral part of Georgia and supported its territorial integrity according to the principles of international law. Therefore, the Court concluded that Georgian, as the official language of Georgia, could be considered to be one of the official languages in both those regions for the purposes of Article 2 of Protocol No. 1 (*Georgia v. Russia (IV)*, 2024, § 80).

148. Considering that reported incidents were sufficiently numerous and interconnected to amount not merely to isolated incidents or exceptions but to a pattern or system, and in view of the regulatory nature of the impugned measures and their general application, the Court considered that the "official tolerance" element of the administrative practice had also been established beyond reasonable doubt (§ 79). It further explored the possibility of children attending schools situated in the Georgian-controlled territory. The Court referred to *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, where it had considered in a similar context, that given the fundamental importance of primary and secondary education for each child's personal development and future success, it was impermissible to force children and their parents to make difficult choices with the sole purpose of entrenching the separatist ideology – finding that there was no evidence that the impugned measures pursued a legitimate aim. Accordingly, in the present case, the Court concluded that the right in question had been curtailed to such an extent as to impair its very essence and deprive it of its effectiveness (§ 82), and that there had therefore been a violation of Article 2 of Protocol No. 1.

149. Lastly, in the case of *Ukraine v. Russia (*re *Crimea)* [GC], 2024, the Court examined a complaint that the Russian Federation's administrative practice of the suppression of the Ukrainian language in schools and the persecution of Ukrainian-speaking children at school was in breach of their right to education under Article 2 of Protocol No. 1 (§ 1152). Interpreting the right to education in light of relevant international humanitarian law, particularly Article 50 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, which provides that, inter alia, the occupying power must facilitate the proper working of all institutions devoted to education of children in the occupied territory (§§ 1157-1158), the Court found that during the period under consideration there existed an administrative practice amounting to a denial of substance of the right to education and a violation of Article 2 of Protocol No. 1 (§ 1165).

150. The Court rejected the Russian Federation's submissions that education in both the Crimean Tatar and Ukrainian languages had been offered alongside education in Russian and that not only the changes in the proportions of the school population studying in different languages than Russian constituted "small changes", but also reflected changes in demand (§ 1156). In the Court's view, this change could not be regarded as "small" given the multiple concordant evidence pointing to a significant decline in the number of educational facilities and classes teaching in Ukrainian, as compared with the number previously available in Crimea. The Court held that the denial of the right at issue was a direct consequence of "the introduction of the Russian Federation's education

standards in Crimea" as the respondent State's policy, the result being that education in the Ukrainian language had almost disappeared from Crimea. The Court cited the relevant passage from *Catan and Others*, which it applied, in essence, to the present case, stating that there was no evidence that the measures at stake pursued a legitimate aim and that the language policy was intended to reinforce Russification (§§ 1163-1164, relying on *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 144).

151. Furthermore, the case *Ukraine and the Netherlands v. Russia* [GC], 2025, §§ 1485-1497, concerned the conflict that began in eastern Ukraine in 2014 following the arrival in the Donetsk and Luhansk regions of pro-Russian armed groups, and escalated after Russia's full-scale invasion of Ukraine beginning on 24 February 2022.

152. As to the general language policy in Ukraine, the Court noted that according to the 1996 Constitution, the Ukrainian language was the only official language in the country. In 2012 the Ukrainian Parliament adopted the Law on the Principles of the State Language Policy, which conferred upon national minority languages the status of a "regional language" of Ukraine where the percentage of persons belonging to national minorities exceeded 10% of the total local population. The law authorised the use of regional languages in courts, schools and other government institutions in those areas, alongside the Ukrainian language. Under this law, the Russian language was recognised as a regional language in nine regions of Ukraine, including in the Donetsk and Luhansk regions. The law was declared unconstitutional in February 2018. The 2017 Ukrainian law on education provides that the Ukrainian language is the language of education at all levels except for subjects that are allowed to be taught in two or more languages, namely English or one of the other official languages of the European Union, which does not include Russian.

153. The Court found that measures to suppress education in the Ukrainian language had begun in occupied territory in 2014. Russian became the language of education, with a Russian curriculum and textbooks and schools being run in conformity with the Russian system. Teaching staff, children and parents had been harassed and threatened for using the Ukrainian language at school. These measures had been extended to other occupied areas in 2022. Relying on *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 144, and *Valiullina and Others v. Latvia*, 2023, § 93, describing similar Russification policies, the Court noted that changes made to the education system were thus primarily aimed at replacing the only official language on sovereign Ukrainian territory with the language of the *de facto* occupation authorities, with the overall political objective of enforcing the Russification of the population in the territories under the control of those *de facto* authorities and of separating those territories from Ukraine. The Court thus held that the failure to make continuing provision for teaching in the Ukrainian language in the Donetsk and Luhansk regions after 2014, and in the other Ukrainian territories under Russian control after February 2022, had amounted to a denial of the substance of the right to education under Article 2 of Protocol No. 1 to the Convention (*mutatis mutandis*, *Cyprus v. Turkey* [GC], 2001, § 278).

154. Furthermore, after 2022, the arrangements for advancing the Russian narrative – which had denied Ukraine's existence as an independent State – in schools in occupied territory had sought to enforce the Russification of the Ukrainian population living there, in line with the overall political objectives of separating these areas from Ukraine. Parents of children in these areas had been faced with sending their children to school in circumstances where the education had been, in important respects, to be conducted in a manner wholly inconsistent with their political and philosophical beliefs or risking severe sanction or no education at all. The Court also found that such teaching had pursued the aim of indoctrination which had not respected the convictions of their parents. The Court concluded that the Russian Federation was responsible for an administrative practice in occupied areas which consisted of suppressing the Ukrainian language in schools between 11 May 2014 and 16 September 2022, and also of indoctrination in education between 24 February and 16 September 2022, in violation of Article 2 of Protocol No. 1 to the Convention.

155. The Court has also dealt with disciplinary sanctions in schools. Imposing disciplinary suspensions or sanctions on members of minority groups advocating for the right to receive education in their own language may, in itself, give rise to a violation of the Convention. In the cases of *İrfan Temel and Others v. Turkey*, 2009, and *Çölgeçen and Others v. Turkey*, 2017, where students had petitioned university authorities to introduce Kurdish language classes as an optional module, Article 10 of the Convention and Article 2 of Protocol No. 1 were both relied on: the Court decided to interpret the second provision in the light of the first. In both cases, the Court held that the disciplinary sanction could not be considered to be reasonable or proportionate and found a violation of Article 2 of Protocol No. 1 (*İrfan Temel and Others v. Turkey*, 2009, §§ 46-47; *Çölgeçen and Others v. Turkey*, 2017, §§ 54-57). In a similar factual scenario, the Court decided to examine the applicant's complaints under Article 10 of the Convention rather than Article 2 of Protocol No. 1 (*Döner and Others v. Turkey*, 2017, § 114). In *Döner and Others v. Turkey*, 2017, the applicants were subject to a disciplinary sanction for submitting petitions requesting that their children be provided with education in the Kurdish language in the public elementary schools. The applicants' houses were searched on suspicion that their action had been instigated by an illegal armed organisation. The applicants were subsequently arrested and detained, despite the absence of any evidence, until they were ultimately acquitted. Having regard to the ongoing public debate at the relevant time regarding the social and cultural rights of Turkish citizens of Kurdish ethnic origin and to the legislative changes that ensued in the area of education in Kurdish language shortly after their submission, the Court considered that the applicants' request pertained to a matter of "public interest" (see also, *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012, § 74). Therefore, the Court found that the domestic authorities had failed to apply standards which were in conformity with the principles embodied in Article 10 of the Convention despite the important interests at stake (§§ 97-109).

156. Finally, in *Mile Novaković v. Croatia*, 2020, a teacher of Serbian ethnic origin was dismissed for failing to use the standard Croatian language when teaching. In the Court's view, the crucial reason for the applicant's dismissal was closely related to his Serbian ethnic origin and his age and had therefore been sufficiently linked to his private life. While not undermining the importance of the government's pursued aim (protecting the right of pupils to receive an education in the Croatian language), and its importance in the specific context of the region at that time, the Court found a violation of the applicant's Article 8 rights because no alternatives to dismissal which would have allowed the applicant to align his teaching with the legislation in force had been contemplated. Given the proximity of the two languages concerned, and the fact that the applicant had lived and worked in Croatia for most of his professional life, it was difficult to understand why the option of providing him with additional training in the standard Croatian language had not been further explored (§§ 62-70).

B. In the political context[33]

157. Respecting minority groups entails safeguarding their right to communicate in their minority language in the public domain, particularly concerning political matters. The Court stresses the importance of guaranteeing political candidates from minority groups the right to use their minority language in electoral campaigns, which is a necessary condition for ensuring that persons belonging to such groups have equal access to elections with that enjoyed by other citizens (*Mestan v. Bulgaria*, 2023, § 61). States have the right, in principle, to regulate the use of languages by candidates and other persons during election campaigns and, where appropriate, to impose certain restrictions or conditions which correspond to a "pressing social need" (*Mestan v. Bulgaria*, 2023, § 60).

158. Nevertheless, in the case of *Şükran Aydın and Others v. Turkey*, 2013, where the use of Kurdish had been restricted by domestic provisions containing a blanket prohibition on the use of any language

[33] See under "Electoral Rights" below.

other than Turkish (the official language) in election campaigning, coupled with criminal sanctions, the Court found that the ban in question had not met a "pressing social need" and could not be regarded as "necessary in a democratic society" (*Şükran Aydın and Others v. Turkey*, 2013, § 56). In finding so, the Court distinguished between cases concerning the use of an unofficial language in the context of communications with public authorities or before official institutions, with those concerning a linguistic restriction imposed on persons in their religions with other private individuals, albeit in the context of public meetings during election campaigns (*Şükran Aydın and Others v. Turkey*, 2013, § 52).

159. Similarly, the case of *Semir Güzel v. Turkey*, 2016, concerned the use of the Kurdish language, in the context of meetings of a political party. The applicant, vice-president of a political party, was prosecuted for having allowed participants at the general congress he was chairing to speak in Kurdish during their interventions. At the relevant time, it was a criminal offence for a political party to use any language other than Turkish at congresses and meetings. The Court noted that, in the course of the criminal proceedings against him, the applicant made it very clear that he had not used his power as chairperson to intervene when certain delegates spoke in Kurdish because of his view that Kurdish should be used in all areas of life; that those who spoke Kurdish were speaking in their mother tongue; and that he believed that it was neither legal nor ethical for him to intervene and to force people to speak in a language other than their mother tongue (§ 29). The Court held that the domestic provision regulating political parties had not been clear enough to have enabled the applicant to foresee that he could face criminal proceedings and accordingly, the interference with his freedom of expression was not "prescribed by law", and thus in violation of Article 10 of the Convention (*Semir Güzel v. Turkey*, 2016, §§ 29-41).

160. The Court held the same with respect to an administrative fine that had been imposed as a result of absolute statutory prohibition on the use of non-official languages by politicians in election campaigning. In the case of *Mestan v. Bulgaria*, 2023, a leader of a political party and candidate to parliamentary elections was ordered to pay an administrative fine on the grounds that he had spoken in a language (Turkish) other than the official language (Bulgarian) at a public event during his election campaign. The Court held that a regulatory framework consisting of an absolute prohibition on the use of a non-official language coupled with administrative sanctions could not be considered compatible with the essential values of a democratic society, which included freedom of expression guaranteed by Article 10 of the Convention. The Court considered that the right of a person to impart their political views and ideas and the right of others to receive such information would be meaningless if the possibility of using a language that could properly convey those views and ideas were diminished owing to the threat of sanctions, even if they were administrative in nature. Hence, the Court found that the prohibition neither corresponded to a pressing social need, nor was proportionate to the legitimate aims mentioned in Article 10 § 2 of the Convention (*Mestan v. Bulgaria*, 2023, §§ 60-64).

161. Regarding elected representatives, no provision of the Convention expressly guarantees "linguistic freedom" as such, or their right to use the language of their choice when making statements and voting within an assembly (see *Birk-Levy v. France* (dec.), 2010, where a complaint under Article 10 of the Convention on the prohibition on members' use of Tahitian during French Polynesian Assembly debates was found inadmissible; see also *Clerfayt, Legros et al. v. Belgium*, Commission decision, 1985, where the Commission found inadmissible a complaint on a ban on the use of French by councillors in their municipal councils, which were located in the Dutch-language region where the official language was Dutch). In a previous case, where electors had to vote either for candidates who would take the parliamentary oath in the French national minority language and would accordingly join the French-language group in the Parliament, or else for candidates who would take the oath in Dutch and so belong to the Dutch-language group, the Commission found this was not a disproportionate limitation such as would thwart "the free expression of the opinion of the people in the choice of the legislature", and accordingly concluded that there had been no breach of Article 3 of Protocol No. 1 (*Mathieu-Mohin and Clerfayt v. Belgium*, 1987 § 57; see also *Fryske nasionale partij*

and Others v. The Netherlands, Commission decision, 1985, where the Commission found incompatible ratione materiae with Articles 9 and 10 of the Convention a complaint concerning the refusal to allow person to use the Frisian language for administrative and political purposes (in the present case, for parliamentary elections)).

162. Furthermore, the Court recognised in the case of *Podkolzina v. Latvia*, 2002, that requiring a candidate for election to the national parliament and who belonged to the Russian-speaking minority to have sufficient knowledge of the official language pursues a legitimate aim under Article 3 of Protocol No. 1 (§ 34). However, in that case, the Court still found a violation with regards to the striking of the candidate from the list because of the absence of any guarantee of objectivity sought by the new language examination procedure, which was therefore incompatible with the requirements of procedural fairness and legal certainty to be satisfied in relation to candidates' eligibility (§§ 36-38). On the contrary, no violation was found under Article 3 of Protocol No. 1, in conjunction with Article 14 of the Convention, by the Commission regarding the requirement that candidates could be nominated to stand in parliamentary elections only in the official language of the State (Spain) or in languages having the status of "co-official language" in their respective Autonomous Communities but not Asturian (*Association Andecha Astur v. Spain*, Commission decision, 1997).

C. Language use in private and family life

163. The spelling of surnames and forenames according to minority or foreign languages falls within the ambit of Article 8. In cases concerning the simple transliterations (i.e. the straightforward adaptation of foreign surnames to the customary rules governing the phonetics and grammar of a given language), the Court found the holder's ethnic and national identity not to be affected (*Bulgakov v. Ukraine*, 2007, § 46). In the case of *Kuharec alias Kuhareca v. Latvia* (dec.), 2004, the Court held the addition of a variable feminine ending to a surname of Russian origin in a passport given to a non-citizen with permanent residency was not in violation of Article 8 of the Convention, because the original written version of the applicant's name was entered in her passport; the difference between the original spelling and the adapted spelling was minimal; the disputed measure did not prevent her identification; and the practical difficulties which she may had experienced on that account were non-existent. The Court reached the same finding in the case of *Mentzen v. Latvia* (dec.), 2004, regarding the transliteration of a foreign surname of German origin in accordance with Latvian phonetic rules. The Court found that the practical difficulties when travelling abroad because of doubts raised by authorities as the equivalence of the two written forms of the same surname were insignificant, given that the misunderstandings were always corrected with additional explanations from the applicant.

164. However, in the case of *Bulgakov v. Ukraine*, 2007, the Court noted that the disputed measure went beyond a mere transliteration or grammatical adaptation as regards to the transcription of first name and patronymic of a Russian origin citizen in his Ukrainian passports into the Ukrainian form (*Bulgakov v. Ukraine*, 2007, §§ 46-47). Not only were the first name and patronymic to be transliterated in Ukrainian, but they had to always be entered in both their historical and etymological versions, whatever their precise origin (ibid, § 47). Nevertheless, the Court found no evidence to conclude that the system of "Ukrainianisation", as such, could be incompatible with the requirements of Article 8, given that a person belonging to a national minority was entitled to use his or her original name and to revert to that name if it had been changed (ibid, § 48).

165. Furthermore, the Court found no violation of Article 8 of the Convention in the case of *Kemal Taşkın and Others v. Turkey*, 2010. Whereas the refusal to allow citizens of Kurdish origin to spell the names they had requested using letters not contained in the Turkish alphabet (q, w and x) had amounted to interference with the exercise of their right to respect for their private life (§ 50), the Court found that the practice of phonetic transposition had been aimed at preventing disorder and

protecting the rights of others and that the Turkish authorities had not overstepped their margin of appreciation in the matter (§§ 58 and 72; see also the case of *Baylac-Ferrer and Suarez v. France* (dec.), 2008, where the phonetic transposition of a name of a regional origin to maintain linguistic unity in administrative matters was found to be of objective and reasonable justification; as well as *Macalin Moxamed Sed Dahir v. Switzerland* (dec.), 2015, and *Šiškina and Šiškins v. Latvia* (dec.), 2001, on the refusal to change name and surname spelling with pejorative connotations if mispronounced or pronounced in the official language, respectively, where the Court reached a similar conclusion).

166. On the contrary, the Court found a violation of Article 8 in *Güzel Erdagöz v. Turkey*, 2008, on the ground that the Turkish courts had refused the applicant's request for rectification of her forename in line with its Kurdish pronunciation, i.e. "Gözel" not "Güzel", based not on any clearly established legislation but mainly on the applicant's preference for a spelling of her forename that was not in the dictionary of the Turkish language. The Court observed that a general ban on names that did not appear in the "Turkish dictionary" would be difficult to reconcile with Article 8 or the extremely diverse linguistic origins of Turkish forenames, and concluded that Turkish law had failed to indicate with sufficient clarity the scope and manner of exercise of the authorities' discretion when it came to applications for the rectification of forenames and there were no adequate safeguards against the abuse that could result from the application of such restrictions (§ 55

167. Similarly, in the case of *Aktaş and Aslaniskender v. Turkey*, 2019, where the applicants were Turkish nationals – one of Assyrian ethnic origin and the other one a Buddhist -, the refusal to change a surname on the sole grounds that the new name requested was not Turkish was found in violation of the applicants' Article 8 rights. The Court held that the domestic courts had conducted a purely formalistic examination of the legislative and statutory texts, without having taken into account the arguments and the specific and personal situations of the applicants, or balanced the competing interests. The Court concluded that that the State failed to strike a fair balance between the competing interests of the applicants and of society as a whole (§§ 46-50; compare with *Ismayilzade v. Azerbaijan*, 2024, §§ 35-42, where the Court held that refusal to register a forename did not prevent the applicant from using it, and that the resulting inconvenience was insufficient to violate Article 8).

D. In detention context

168. In the context of detention, minority groups can face additional challenges regarding interference with private and family communication in a given language, particularly in connection with the rights of prisoners to freedom of correspondence and to converse in their language. Regarding the former, the Court found violations of Article 8 in cases concerning Kurdish prisoners in Türkiye. In *Kapçak v. Turkey*, 2009, correspondence letters in Kurdish had been intercepted by prison staff because they could not be translated into Turkish. The Court found a violation of Article 8 of the Convention as the interference had not been in accordance with the law (*Kapçak v. Turkey*, 2009, § 28). In a similar case, *Mehmet Nuri Özen and Others v. Turkey*, 2011, the Court likewise found the absence of legal framework clarifying the procedure for handling correspondence written in a language other than Turkish – the Kurdish language –, coupled with the prison authorities' practice of requiring a prior translation at the prisoner's own expense, to be incompatible with Article 8 of the Convention (*Mehmet Nuri Özen and Others v. Turkey*, 2011, §§ 57-61).

169. As to telephone communications between prisoners and their relatives, in *Nusret Kaya and Others v. Turkey*, 2014, the Court found a violation of Article 8 of the Convention in respect of the restriction on Turkish prisoners using Kurdish when telephoning. Emphasising that the matter in issue related, not to the prisoners' linguistic freedom as such, but to their right to maintain meaningful contact with their families, the Court noted the possibility of inmates to maintain contact with the outside world through telephone conversations, but that such could, however, for security reasons, only be in Turkish, unless it was ascertained by the prison authorities that the person with whom the

inmate wished to converse in another language genuinely did not understand Turkish (§§ 54-57). Because the preliminary procedure for the purpose of ascertaining whether their relatives were genuinely unable to express themselves in Turkish was not based on relevant and sufficient grounds, the Court concluded that the interference could not be regarded as necessary (§§ 60-61).

170. The right to converse in a given language extends to detainees' visits with family. For instance, the case of *Mozer v. the Republic of Moldova and Russia* [GC], 2016, concerned a Moldovan national belonging to the German ethnic minority who was detained in a prison and who complained that, during his visits with his parents, they were not allowed to speak their own language (German) and were made to speak Russian or risk the guard calling off the visit. A violation of Article 8 was found in regard to the lack of explanation that had been given as to why the visits had to be monitored so closely, to the point that they were at risk of having the visit cancelled if they did not speak a language the guard understood (§ 195).

171. Furthermore, in exceptional circumstances, detainees from minority groups may have a right to psychiatric treatment in a specific language under Article 3 of the Convention. This was inferred in the case of *Rooman v. Belgium* [GC], 2019, where the Court found that the delay in putting in place measures that would facilitate communication between a Belgium detainee belonging to the German-speaking minority and his health-care providers had the effect of depriving him of the treatment required by his health condition (mental disorders) (§ 156).

E. In proceedings

172. Issues under Article 6 of the Convention in relation to language rights may arise when minority groups are not afforded the possibility of understanding the criminal accusations against them in their own language (see *Knox v. Italy*, 2019, and *Vizgirda v. Slovenia*, 2018, for the general principles on the use of languages in criminal proceedings). In both *Şaman v. Turkey*, 2011, and *Baytar v. Turkey*, 2014, Kurdish speakers were found to not have been provided with an interpreter during police custody, leading to violations of their defence rights under Article 6 § 3 (c) and (e) in conjunction with Article 6 § 1 of the Convention (*Şaman v. Turkey*, 2011, § 36; and *Baytar v. Turkey*, 2014, 59). In the case of *Şaman v. Turkey*, 2011, the Court considered, having regard tothe applicant's limited knowledge of Turkish, that she could not reasonably have appreciated the consequences of accepting to be questioned without the assistance of a lawyer in a criminal case concerning the investigation of particularly grave criminal offences (*Şaman v. Turkey*, 2011, § 35). In the case of *Baytar v. Turkey*, 2014, the Court found that the use of incriminating statements made during the applicant's police custody without the assistance of an interpreter was in breach of Article 6 of the Convention (*Baytar v. Turkey*, 2014, §§ 58-59). This had not been rectified by the presence of an interpreter later in the proceedings, considering also that his skills had not been verified by the judge (ibid., §§ 56-57).

173. Nevertheless, the right to the free assistance of an interpreter guaranteed under Article 6 § 3 (e) of the Convention does not go so far as to require a written translation of all items of written evidence or official documents in the procedure, as reiterated in *Protopapa v. Turkey*, 2009, § 80 (see also *Igors Dmitrijevs v. Latvia*, 2006, where the Court found inadmissible the complaint of a Russian-speaking permanently resident of Latvia in regard to the documents relating to criminal proceedings against him that were only in Latvian, as he had been able to comprehend their content). In the case *Protopapa v. Turkey*, 2009, the Court stressed, in respect to a Cypriot national who had been arrested by the Turkish police but interrogated in Greek, the importance of determining whether the accused understood the charges and the statements made against them by the witnesses during their trial (§ 78). The Court found that she did, and that she had also been offered the opportunity to use legal aid (§§ 83-84), and therefore, that the criminal proceedings were not unfair or otherwise contrary to the provisions of the Convention (§ 88).

174. Likewise, in the case of *Lagerblom v. Sweden*, 2003, the Court examined the extent of knowledge of Swedish by a Finish national settled in Sweden, to conclude that although his knowledge might had been somewhat limited despite his lengthy stay in Sweden, it was not such as to find him so handicapped that he could not at all communicate with his defence counsel (*Lagerblom v. Sweden*, 2003, § 62). Accordingly, the Court rejected his complaint under Article 6 § 3 c) that, in criminal proceedings against him, he had not been allowed to be defended by a counsel of his own choosing, with whom he could have spoken Finnish and whose pleadings he would have been able to fully understand (§ 64).

175. With regard to civil proceedings, the Commission had the opportunity to examine whether the refusal by domestic courts to accept the complaint for defamation of an Austrian citizen belonging to the Slovenian minority in Austria in Slovenian constituted a violation of Article 6 of the Convention (*Isop v. Austria*, Commission decision, 1962). It found no violation, despite the expiry of the time-limit for introducing a similar complaint in the German language, which occurred during the proceedings concerning his right to use the Slovenian language. The Court reached the same finding in the case of *Kozlovs v. Latvia* (dec.), 2002, with respect to the rejection by civil courts of an appeal lodged by a Latvian citizen on the ground that it was not drafted in Latvian, the official language, but in Russian.

176. The Court also stressed the importance of ensuring that individuals are informed in a language they understand throughout administrative proceedings. In the case of *Čonka v. Belgium*, 2002, the Court examined the conditions under which a group of Slovakian migrants of Roma origin had been arrested and expelled from Belgium, and observed that only one interpreter was available to assist the large number of Roma families who attended the police station in understanding the verbal and written communications addressed to them and, although present at the police station, he did not stay with them at the closed centre pending their removal to Slovakia (§ 44). Although the Court considered that the information furnished to them satisfied the requirements of Article 5 § 2 of the Convention, it concluded as to a violation of Article 5 § 1 of the Convention on the grounds that, inter alia, the language barriers had prevented them from being afforded a realistic possibility of using available remedies (§ 46).

177. In *Pahor and Others v. Italy* (dec.), 2014, the applicants – Italians belonging to the Slovenian minority – complained that the Italian tax authorities no longer provided them with the Slovenian translation of their car tax assessments, as they had done from 1970 to 1977. Since the applicants refused to use the Italian language when paying their car tax, several disputes arose as to the interpretation of the domestic law concerning the use of the minority language in the communication with the authorities. The applicants subsequently lodged a criminal complaint drafted in Italian. The Trieste Public Prosecutor's Office requested the discontinuance of the case, considering that at the relevant time the domestic legislation concerning the payment of tax in Slovenian had been confusing and vague. The Trieste investigating judge ultimately discontinued the proceedings, given that the applicants had not been victims of any criminal act and observing that the Italian State had since adopted legislation regulating the protection of the Slovenian minority (§§ 3, and 7-9). The application was declared inadmissible by the Court (for different occurrences of the use of minority language, see also *Pahor v. Italy*, Commission decision, 1994, where the post office refused to send the telegram with an address written in Slovenian (manifestly ill-founded), and *Borotschnik and Others against Austria* (dec.), 2012, where the Court decided to strike out the applicants' complaint that there had been no bilingual road signs in German and Slovenian in their village, further to the legislative amendments and erection of such road signs in their village (§ 22)).

F. In broadcasting context

178. Access to broadcasting plays a crucial role for national minorities as it constitutes a way for them to express and preserve their unique identities and cultures.

179. The scope of language rights of national minorities when broadcasting was notably examined by the Court in the case of *Informationsverein Lentia and Others v. Austria*, 1993, where one of the applicants, an Austrian association and a member of the European Federation of Free Radios, could not establish a radio station in southern Carinthia, Austria, in order to broadcast non-commercial radio programmes in German and Slovenian (the minority language) because of the monopoly of the Austrian Broadcasting Corporation. The Court found a violation of Article 10 of the Convention, given that the public monopoly was not justified by a pressing social need.

XII. Electoral Rights[34]

Article 3 of Protocol No. 1 – Right to free elections

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

Article 14 of the Convention – Prohibition of discrimination

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 – General prohibition of discrimination

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

180. The electoral rights of minorities have been addressed under different Convention provisions including Article 3 of Protocol No. 1, Article 1 of Protocol No. 12 and Article 14 of the Convention.

181. Article 3 of Protocol No. 1 differs from the other substantive provisions of the Convention and the Protocols as it is phrased in terms of the obligation of the member State to hold elections which ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom. The Court has established that Article 3 of Protocol No. 1 implies also individual rights, comprising the right to vote (the "active" aspect) and to stand for election (the "passive" aspect) (*Ždanoka v. Latvia* [GC], 2006, § 102).

A. Active aspect: the right to vote

182. The "active" aspect of the right to vote is subject to limitations. Here, as in any other area under Article 3 of Protocol No. 1, the member States enjoy a certain margin of appreciation to establish rules governing parliamentary elections which varies depending on the context. However, the Court has noted that the margin of appreciation afforded to States cannot have the effect of prohibiting certain individuals or groups from taking part in the political life of the country, especially through the appointment of members of the legislature (*Aziz v. Cyprus*, 2004, § 28; *Tănase v. Moldova* [GC], 2010,

[34] For the general principles concerning the right to free elections, see the Guide on Article 3 of Protocol No. 1 – Right to free elections. This Chapter overviews Article 3 of Protocol No. 1 cases of most relevance to the rights of minorities, in particular their participation in political decision-making.

§ 158), nor does it have the effect of requiring different treatment in favour of minority parties when taken in conjunction with Article 14 of the Convention. In that regard, Article 14 of the Convention does not prohibit that States, through their margin of appreciation, treat groups differently in order to correct "factual inequalities" between them: indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (*Partei Die Friesen v. Germany*, 2016, § 37).

183. The Court has found a violation of Article 3 of Protocol No. 1 to the Convention, taken in conjunction with Article 14 of the Convention, in cases concerning the "active" aspect of the right, particularly, the voting rights of minorities (*Aziz v. Cyprus*, 2004, § 38; *Bakirdzi and E.C. v. Hungary*, 2022, § 74).

184. In *Aziz v. Cyprus*, 2004, the applicant, who was a member of the Turkish-Cypriot community living in the Republic of Cyprus, complained that he was prevented from exercising his voting rights on the grounds of national origin and association with a national minority. The Court took the view that, on account of the abnormal situation existing in Cyprus since 1963 and the legislative vacuum, the applicant was completely deprived of any opportunity to express his opinion in the choice of members of the House of Representatives. The very essence of the applicant's right to vote was thus impaired (§§ 26-30). The Court also found a clear inequality of treatment in the enjoyment of the right in question, between the members of the Turkish-Cypriot community and those of the Greek-Cypriot community (§ 38). There had accordingly been a violation of Article 3 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

185. In *Bakirdzi and E.C. v. Hungary*, 2022, the applicants, who were Hungarian nationals belonging respectively to the Greek and Armenian national minority and who were both registered as national minority voters for the 2014 parliamentary elections, complained about the shortcomings of Hungary's minority voting system affecting the secrecy of the vote, impacting on voters' free political choice and therefore making it impossible for a national minority candidate to win a seat in Parliament. The case concerned a statutory scheme with a preferential threshold for minority representatives, introduced as a response to the constitutional concern of ensuring the political representation of national minorities in Hungary. According to the system, members of the officially recognised thirteen minorities could register as minority voters and candidates from the minority lists could gain a seat in Parliament if they reached a preferential threshold, one-quarter of the number of votes required to gain a 'regular seat'.

186. The Court found that this system restricted the applicants' electoral rights in three ways. Firstly, even though the system provided for a preferential threshold, the total number of minority voters belonging to the same minority in Hungary were not high enough to reach that threshold and to win a minority seat in the 2014 elections. While not all votes must necessarily have equal weight as regards the outcome of the election, and no electoral system could eliminate "wasted votes", the Hungarian statutory scheme created a disparity in the voting power of members of national minorities like the applicants, so that the potential value of votes that might be cast for minority lists became diluted. Secondly, since, as a consequence of being registered as minority voters, the applicants could only vote for their respective national minority lists as a whole or abstain from voting altogether, they had neither the choice between different party lists nor any influence on the order in which candidates might be elected from the minority lists. The Court expressed doubts that a system in which a vote might be cast only for a specific closed list of candidates, and which required voters to abandon their party affiliations in order to have representation as a member of a minority ensured "the free expression of the opinion of the people in the choice of the legislature". Thirdly, since voters who registered as minority voters had only one choice – the relevant closed minority list – their electoral choice had indirectly been revealed to everybody, both at a polling station and during the counting procedures, compromising their right to a secret ballot (§§ 58-72).

187. The Court concluded that, while there was no requirement under the Convention of different treatment in favour of minority parties (see also, in this respect, *Partei Die Friesen v. Germany*, 2016, referenced below), once the legislature decided to set up a system intended to eliminate or reduce actual instances of inequality in political representation, it was only natural that it should contribute to the participation of national minorities on an equal footing with others in the choice of the legislature, rather than perpetuating the exclusion of minority representatives from political decision-making at a national level (§ 73). In this case, the system that had been put in place limited the opportunity of minority voters to enhance their political effectiveness as a group and threatened to reduce, rather than enhance, diversity and the participation of minorities in political decision-making. The combination of the above restrictions on the applicants' voting rights, considering their total effect, had constituted a violation of Article 3 of Protocol No. 1 taken in conjunction with Article 14 of the Convention (§ 74).

188. The case of *Podkolzina v. Latvia*, 2002, concerned the removal of a candidate, belonging to the Russian-speaking minority in Latvia, from the list for parliamentary elections, due to insufficient knowledge of the State's official language, Latvian. The Court considered that the right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1, would be illusory if the individual concerned could be arbitrarily deprived of it at any moment. The Court concluded that the decision to strike the applicant off the list of candidates had not been based on the lack of a valid language certificate. In fact, the applicant did have such a certificate, whose validity was never questioned by the national authorities. Moreover, this certificate had been issued in accordance with the regulations governing proficiency in the official language. Nevertheless, the national authorities had decided to impose a fresh language examination on the applicant. Consequently, in the absence of any objective guarantees and whatever the objective sought by this new examination, the procedure followed in the applicant's case was incompatible with the Convention's procedural requirements of fairness and legal certainty. The Court found a violation of Article 3 of Protocol No. 1 as the decision to remove the applicant from the candidate list could not be deemed proportionate to the legitimate aim pursued (§§ 33-38).

189. Finally, the case of *Kovačević v. Bosnia and Herzegovina* [GC], 2025, concerned alleged discrimination under Article 14, in conjunction with Article 3 of Protocol No. 1 and under Article 1 of Protocol No. 12 to the Convention, concerning the applicant's voting rights. Unlike the applicants in *Sejdić and Finci v. Bosnia and Herzegovina* [GC], 2009, and in the related line of cases which concerned restrictions on the *passive* electoral right (ineligibility to stand for election; see the next Chapter "Passive aspect: the right to stand for election"), the applicant complained from the standpoint of the *active* electoral right (right to vote).

190. The electoral system in Bosnia and Herzegovina is governed by the Constitution which has its origins in the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (the Dayton Agreement), signed at the end of the 1992-1995 war. Since then, Bosnia and Herzegovina has been composed of two Entities – the Federation of Bosnia and Herzegovina (the Federation) and the Republika Srpska – plus the Brčko District which belongs to both. The Constitution makes a distinction between different categories of the population. Only persons declaring affiliation with one of the three so-called "constituent peoples" (Bosniacs, Croats and Serbs) are entitled to run for the House of Peoples and the Presidency. Moreover, only voters residing in the Republika Srpska may participate in the selection or election of Serb members of the House of Peoples (indirectly) and the Presidency (through direct elections), whereas only the voters residing in the Federation may participate in the selection or election of Bosniac and Croat members of those State bodies. The applicant complained that he was discriminated against because of the territorial and ethnic requirements applicable to elections for the House of Peoples of the Parliamentary Assembly and the Presidency of Bosnia and Herzegovina, which prevented him from voting for the candidates of his choice in the latest legislative and presidential elections of October 2022.

191. As regards the applicant's victim status, the Grand Chamber held that neither his eligibility to vote in cantonal elections (and thus indirectly for the House of Peoples) nor the fact of being subject to the legislative authority of that body, like all citizens of Bosnia and Herzegovina, was found to be sufficient to establish that the applicant had been directly and personally affected by the alleged discrimination in relation to the second legislative chamber. The Court expressly rejected an approach that would grant virtually automatic victim status to the entire voting population, without considering whether the domestic electoral legislation had had a direct and personal discriminatory impact on each individual applicant. A more targeted assessment as to the existence of a victim status was required (§ 198). The Court further noted that the applicant's complaints regarding elections to the Presidency entailed some differences from the complaints relating to the House of Peoples. However, neither the direct nature of the vote, nor the nature and scope of the Presidency's executive powers were sufficient to render the applicant a "victim" of discrimination in respect of any perceived deficiency in the process of elections to the Presidency, similar to cantonal elections (§§ 211-12).

192. The Court also recalled that the active and passive aspects of the right to free elections protected different interests, differed in scope, entailed different requirements and might be subject to different limitations. In particular, a voter alleging discrimination must demonstrate a sufficiently direct link between the impugned electoral rules and the harm allegedly sustained in the exercise of his or her voting rights (§ 201). In the absence of substantiated elements showing that the applicant had been directly and personally subjected to discriminatory treatment, either individually or as a member of a group (§§ 208-09, 213), the Court found that the complaints amounted in substance to an *actio popularis* challenging the constitutional and electoral structure *in abstracto* (§§ 210, 214-16). The application was declared therefore inadmissible, inter alia, on the basis of a lack of victim status.

B. Passive aspect: the right to stand for election

193. The Court has been more cautious in assessing restrictions of the "passive" aspect of Article 3 of Protocol No. 1 , States enjoying a broader margin of appreciation in this regard.

194. However, where a difference in treatment (Article 14) is based on race, colour or ethnicity, the notion of objective and reasonable justification must be interpreted as strictly as possible (*Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, § 44).

195. The Court has found violations of Article 14 in conjunction with Article 3 of Protocol No. 1 and/or Article 1 of Protocol No. 12 in several cases related to the ability to stand for elections[35] (*Sejdić and Finci v. Bosnia and Herzegovina* [GC], 2009, which concerned the inability of the applicants, a Roma and a Jew, to stand for parliamentary elections; *Zornić v. Bosnia-Herzegovina*, 2014, which concerned the ineligibility of the applicant, a citizen of Bosnia and Herzegovina, to stand for election without a declaration of affiliation to one of the constitutionally defined "constituent peoples"; *Danis and Association of Ethnic Turks v. Romania*, 2015, and *Cegolea v. Romania*, 2020, concerning the additional eligibility requirement applicable solely to candidates of national minority organisations not already represented in Parliament) and related to the right to vote (*Aziz v. Cyprus*, 2004, concerning the impossibility for Turkish Cypriots to vote in parliamentary elections).

196. *Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, concerned the inability of the applicants of Roma and Jewish origin to stand for election to the highest political offices in the country as a result of the constitutional requirement to affiliate oneself with one of the three "constituent people" of Bosnia and Herzegovina. The Court examined an exclusion rule to the effect that only persons declaring affiliation with a "constituent peoples" were entitled to run for the House of Peoples and the State Presidency. Potential candidates who refused to declare such an affiliation could not therefore stand for election. The Grand Chamber noted that this exclusionary rule pursued at least

[35] See also, the Guide on Article 14 and on Article 1 of Protocol No. 12 – Prohibition of discrimination.

one aim which was broadly compatible with the general objectives of the Convention, namely the restoration of peace. When the impugned constitutional provisions were put in place a very fragile ceasefire was in effect on the ground and, further to the 'Dayton Agreement', the provisions were designed to end a brutal conflict. The nature of the conflict was such that the approval of the "constituent peoples" (namely, the Bosniacs, Croats and Serbs) was necessary to ensure peace. This could explain, without necessarily justifying, the absence of representatives of the other communities (such as local Roma and Jewish communities) at the peace negotiations and the participants' preoccupation with effective equality between the "constituent peoples" in the post-conflict society (§ 45). However, there had been significant positive developments in Bosnia and Herzegovina since the Dayton Agreement (§ 47). In addition, by ratifying the Convention and the Protocols thereto without reservations, the respondent State had voluntarily agreed to meet the relevant standards (§ 49). The Court thus concluded that the applicants' continued ineligibility (being of Roma or Jewish origin) to stand for election lacked an objective and reasonable justification and had therefore breached Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1 (§ 50). It further held that the constitutional provisions which rendered the applicants ineligible for election to the Presidency had been discriminatory under Article 1 of Protocol No. 12 to the Convention (§ 56).

197. In *Zornić v. Bosnia-Herzegovina*, 2014, the Court found, for the same reasons, a violation of Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1 as regards the applicant's ineligibility to stand for election to the House of Peoples and to the presidency without a declaration of affiliation to one of constitutionally defined "constituent peoples". Observing that there had been excessive delay in executing its judgment in *Sejdić and Finci v. Bosnia-Herzegovina* [GC], 2009, and that the violation complained of was the direct result of that delay, the Court indicated under Article 46 of the Convention that, eighteen years after the tragic conflict in Bosnia-Herzegovina, the time had come to adopt a political system capable of affording all citizens of that country the right to stand for election to the House of Peoples and to the Presidency without any distinction as to ethnic origin and without granting special rights for constituent people to the exclusion of minorities or citizens of Bosnia and Herzegovina (§ 43).

198. The case of *Partei Die Friesen v. Germany*, 2016, concerned the threshold of 5% of votes cast imposed by the Land of Lower Saxony to obtain seats in Parliament. The applicant, a political party representing the interests of the ethnic minority group of Frisians in that Land, alleged that the 5% threshold breached its right to participate in elections without discrimination and had requested to be exempted from the rule. The issue was thus the scope of the member States' obligations as regards the protection of minorities in the electoral context. The Court noted that the former European Commission of Human Rights had found, in a comparable case concerning the rights of the German-speaking minority in Northern Italy (see *Magnago and Südtiroler Volkspartei v. Italy*, Commission decision, 1996), that the Convention did "not compel the Contracting Parties to provide for positive discrimination in favour of minorities" (*Partei Die Friesen v. Germany*, 2016, §§ 42-43). The Court pointed out, however, that the decision of *Magnago and Südtiroler Volkspartei v. Italy* was taken before the entry into force of the Framework Convention on 1 February 1998 ("the Framework Convention").

199. Nevertheless, as the Lower Saxony Constitutional Court had observed, the Court considered that no clear and binding obligation derives from the Framework Convention to exempt national minority parties from electoral thresholds. The States party to the Framework Convention enjoy a wide margin of appreciation in how to approach the Framework Convention's aim of promoting the effective participation of persons belonging to national minorities in public affairs as stipulated in Article 15 of that instrument. Consequently, the Court took the view that, even when interpreted in the light of the Framework Convention – which laid emphasis on the participation of national minorities in public affairs, particularly in all decisions affecting them – the Convention did not call for a different treatment in favour of minority parties in this context, as there is no clear and binding obligation deriving from the Framework Convention to exempt national minority parties from electoral

thresholds (*Partei Die Friesen v. Germany*, § 43). It therefore found no violation of Article 14 of the Convention in conjunction with Article 3 of Protocol No. 1.

200. In two other cases against Romania, the applicants complained about legislation imposing an additional eligibility condition applicable solely to national minority organisations not already represented in Parliament. Examining those complaints under Article 14 taken in conjunction with Article 3 of Protocol No. 1, the Court held that the law in question pursued a legitimate aim of ensuring that organisations not yet represented in Parliament were properly represented and of eliminating frivolous candidates. However, in *Danis and Association of Ethnic Turks v. Romania*, 2015, the law imposing the additional criterion had been enacted just a few months before the elections, with the result that it had been objectively impossible for the applicants to fulfil it. In *Cegolea v. Romania*, 2020, the procedure for obtaining the additional criterion did not afford sufficient safeguards against arbitrariness, and lacked effective judicial scrutiny over discretionary powers of the executive authorities.

201. *Pilav v. Bosnia and Herzegovina*, 2016, involved the ineligibility of a Bosniac living in the Republika Srpska to stand for election to the national presidency. Unlike the applicants in *Sejdić and Finci* and *Zornić* above, the applicant in Pilav belonged to one of the "constituent peoples", and thus had a constitutional right to participate in elections to the Presidency. However, in order to effectively exercise that right he was required to move to the Federation of Bosnia and Herzegovina. Therefore, while theoretically eligible to stand for election to the Presidency, in practice, he could not use this right as long as he lived in the Republika Srpska. While it was true that the residence requirement in question applied to all the "constituent peoples" equally, the applicant was treated differently from Serbs living in the Republika Srpska. For that reason, notwithstanding the difference between this case and *Sejdić and Finci* and *Zornić*, the applicant was also found to have been excluded from standing for election to the national presidency by a combination of his ethnic origin and place of residence, which together amounted to discriminatory treatment in breach of Article 1 of Protocol No. 12 (§ 48).

XIII. Immigration[36]

Article 3 of the Convention – Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 4 of Protocol No. 4 – Prohibition of collective expulsion of aliens

"Collective expulsion of aliens is prohibited."

202. The Court has dealt with a number of cases involving migrants and asylum-seekers, who belonged to a minority group. The applicants, as members of national, ethnic or religious minorities in the countries concerned, lodged their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 of the Convention.[37]

203. In the Court's case law, it is possible to distinguish two scenarios:

i. When expulsion is concerned, the individuals involved are typically foreign nationals in the respondent State. However, there are instances where the expulsion specifically targets groups based on their ethnicity or nationality, such as in the case of *Čonka v. Belgium*, 2002,

[36] For a detailed analysis of the Court's case-law on this topic, see the Guide on Immigration. This Chapter overviews cases of most relevance to the rights of minorities.

[37] See also, the Guide on Article 3 – Prohibition of torture and the Guide on Article 4 of Protocol No. 4 – Prohibition of collective expulsions of aliens.

and the cases involving the expulsion of Georgian nationals from Russia (*Georgia v. Russia (I)* [GC], 2014; *Berdzenishvili and others v. Russia*, 2016).

ii. The second line of case law involves the expulsion of individuals who belong to minorities in the country of destination to which they are being removed. The removal of these individuals is not because of the respondent State's policy of targeting a certain minority group on the basis of ethnicity or nationality. Instead, the issue is whether their minority status in the country of origin or destination puts them at risk of ill-treatment.

204. As to the first line of case law, the Court has examined cases under Article 4 of Protocol No. 4 where members of a group were targeted for expulsion from a State's territory solely on the basis of their membership of that group. In the cases of *Čonka v. Belgium*, 2002, §§ 62-63, and *Georgia v. Russia (I)* [GC], 2014, § 175, the Court found that there were official policies of targeting a certain minority group for removal (Slovakian nationals of Roma origin and Georgian nationals, respectively). The Court determined that those removals had been ordered on the basis of group membership, rather than individual factors, notwithstanding the judicial approval of the deportations. In both cases the expulsions involved the forced removal of a minority population living within the member State's territory.

205. In *Čonka v. Belgium*, 2002, the individuals targeted for expulsion were members of a Roma family from Slovakia. The case concerned the applicants' deportation from Belgium to Slovakia. The Court concluded, in view of the large number of persons of the same origin who had suffered the same fate as the applicants, that the procedure followed by the authorities did not enable it to eliminate all doubt that the expulsion might have been collective. That doubt had been reinforced by a series of factors, notably: (i) prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation; (ii) all the aliens concerned had been required to attend the police station at the same time; (iii) the orders served on them requiring them to leave the territory and for their arrest had been couched in identical terms; it had been very difficult for the aliens to contact a lawyer; and (iv) the asylum procedure had not been completed. Ultimately, at no stage in the period between the service of the notice on the aliens to attend the police station and their expulsion had the procedure afforded sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account. Accordingly, the Court found a breach of Article 4 of Protocol No. 4 to the Convention (§§ 56-63).

206. A similar case, *Georgia v. Russia (I)* [GC], 2014, § 174, concerned the detention and expulsion from Russia of large numbers of Georgian nationals. The applicant Government complained that the respondent State had collectively expelled Georgians from Russia and that the detentions and expulsions of Georgian nationals had been based on their national origin and on their ethnic origin and not on their situation under the immigration rules. The Court held that the expulsions of Georgian nationals were not carried out on the basis of a reasonable and objective examination of the particular case of each individual and that this amounted to an administrative practice in breach of Article 4 of Protocol No. 4 (§§ 170-178). Furthermore, the conditions of detention in which Georgian nationals were held, should be regarded as both inhuman and degrading treatment, which amounted to an administrative practice in breach of Article 3 (§§ 193-205).

207. As to the second line of case-law, the Court has clarified the test applicable in Article 3 expulsion cases in the case of *Khasanov and Rakhamnov v. Russia* [GC], 2022. The Court set out a three-tier test to determine compliance with Article 3, and both the second and third steps concern the minority status of the applicant. The second step of this test is whether the individual belongs to a group systematically exposed to ill-treatment (*ibid.*, §§ 97-99). This often concerns ethnic or religious minorities (see, *A.S.N. and Others v. the Netherlands*, 2020, §§ 107-112, in respect of Sikhs in Afghanistan). In order to establish the existence of a group systematically exposed to ill-treatment, falling under the "general situation" part of the risk assessment, applicants belonging to an allegedly

targeted vulnerable group should describe the existence of a practice or of a heightened risk of ill-treatment for the group of which they claim to be members, and, as a next step, they should establish their individual membership of the group concerned, without having to demonstrate any further individual circumstances or distinguishing features (*Khasanov and Rakhamnov v. Russia* [GC], 2022, § 97). That being said, at the third step of the three-tier assessment, the Court still considers individual risk factors in the light of the applicant's account and the information on the situation in the country of destination in respect of the group in question, and the fact of belonging to a minority group may be relevant (see *M.D. and Others v. Russia*, 2021, § 110, in respect of a Syrian of Kurdish origin). It is particularly true when, despite a possible well-founded fear of persecution in relation to certain risk-enhancing circumstances, it cannot be established at the second step of the assessment that a group is systematically exposed to ill-treatment, obliging the applicant to demonstrate the existence of further special distinguishing features which would place them at a real risk of ill-treatment, in addition to a real risk of being subjected to treatment contrary to Article 3 at the third step (*Khasanov and Rakhamnov v. Russia* [GC], 2022, §§ 100-101).

208. In *Khasanov and Rakhamnov v. Russia* [GC], 2022, the applicants complained that, in the event of their extradition to Kyrgyzstan, they would face a real risk of ill-treatment contrary to Article 3 because they belonged to the Uzbek ethnic minority. The Court examined the situation of ethnic Uzbeks in Kyrgyzstan. The Court had noted that its previous findings that ethnic Uzbeks in Kyrgyzstan constituted a vulnerable group for the purposes of Article 3 had been based on specific reports describing a targeted and systematic practice of ill-treatment against that group at the relevant time. As regards the current situation, the Court noted the absence of specific reporting on ethnicity-based torture of ethnic Uzbeks, as opposed to other ethnicity-based risks, such as insecurity, discrimination with respect to economic and security matters, ethnic profiling and political. Consequently, there was no basis for reaching a conclusion that ethnic Uzbeks constituted a group which was still systematically exposed to ill-treatment. As to the applicants' individual circumstances, the domestic courts conducted a careful examination into the existence of the individual risks capable of preventing the applicants' extradition. Both applicants had failed to demonstrate the existence of ulterior political or ethnic motives behind their prosecution in Kyrgyzstan or further special distinguishing features which would expose them to a real risk of ill-treatment. In the absence of any demonstration of the existence of substantial grounds for believing that they would face a real risk of being subjected to treatment contrary to Article 3, this threshold had not been met by the applicants. Therefore, the Court held that there could be no violation of Article 3 of the Convention in the event of the applicants' extradition from Russia to Kyrgyzstan (§§ 127-139).

209. In *Sultani v. France*, 2007, the applicant, an Afghan national and a member of the Tajik ethnic group, alleged a violation of Article 3 of the Convention and Article 4 of Protocol No. 4 to the Convention, in view of the risks he would run if he were returned to Afghanistan and of the conditions of his deportation. The Court held that the applicant had not demonstrated sufficient evidence to be considered as belonging to a particularly threatened minority group, and to what extent he would personally face a risk of repression (see, *a contrario*, *Salah Sheekh v. the Netherlands*, 2007). It, thus, found no violation of Article 3 if the deportation decision were to be enforced (§§ 67-68). It also found no violation of Article 4 of Protocol No. 4 as the domestic authorities had taken account of the overall context in Afghanistan and of the applicant's individual circumstances, and provided sufficient justification for his deportation (§ 84).

210. Regarding religious minorities, the Court's relevant case law covers converts as well as individuals who belong to a religious minority from the outset and are thus at risk (see *M.A.M. v. Switzerland*, 2022, concerning the expulsion of a Pakistani national who had converted from Islam to Christianity; *F.G. v. Sweden* [GC], 2016, concerning the expulsion of an Iranian national who converted to Christianity; *Z. and T. v. the United Kingdom* (dec.), 2006, concerning impending expulsion of Pakistani Christians).

211. Where an individual claimed that on return to his own country he would be impeded in his religious worship, the Court did not rule out the possibility that the responsibility of the returning State might in exceptional circumstances be engaged under Article 9 of the Convention where the person concerned ran a real risk of flagrant violation of that Article in the receiving State, but found that it would be difficult to visualise a case in which a sufficiently flagrant violation of Article 9 would not also involve treatment in violation of Article 3 of the Convention (*Z. and T. v. the United Kingdom* (dec.), 2006, and see *M.A.M. v. Switzerland*, 2022, § 84).

212. In respect of conversions sur place the domestic authorities initially have to assess whether the applicant's conversion was genuine and had attained a certain level of cogency, seriousness, cohesion and importance, before assessing whether he or she would be at risk of treatment contrary to Articles 2 and 3 of the Convention upon his or her return to the country of origin. Having regard to the absolute nature of Articles 2 and 3 of the Convention, it means that the competent national authorities have an obligation to assess, of their own motion, all the information brought to their attention before taking a decision of removal, regardless of the applicant's conduct (*F.G. v. Sweden* [GC], 2016, §§ 144 and 156).

213. In the case of *F.G. v. Sweden* [GC], 2016, the applicant, an Iranian national complained about the rejection of his asylum claim by Swedish authorities, arguing that, owing to his political past in Iran and his conversion from Islam to Christianity in Sweden, it would be in breach of Articles 2 and 3 of the Convention to expel him to Iran (§ 85), even though he had declined to invoke the conversion as an asylum ground in his initial asylum application. The Grand Chamber found that, because the domestic authorities had been aware of the applicant's conversion, and the fact that he might, accordingly, belong to a group of persons who could be at risk of treatment in breach of Articles 2 and 3 of the Convention upon returning to Iran, they had failed to carry out a thorough examination of the applicant's conversion, the seriousness of his beliefs, the way he manifested his Christian faith in Sweden, and how he intended to manifest it in Iran if the removal order were to be executed. The Grand Chamber found a violation of Articles 2 and 3 of the Convention if the applicant were to be returned to Iran without an ex nunc assessment by the Swedish authorities of the consequences of his conversion (*F.G. v. Sweden* [GC], 2016, §§ 144-158).

214. Similarly, *M.A.M. v. Switzerland*, 2022, concerned the possible expulsion to Pakistan of a Pakistani national who had converted from Islam to Christianity while in Switzerland following the rejection of his asylum claim. The Court found that, despite being informed of the applicant's regular participation in a range of church activities, the domestic authorities had failed to consider it (§ 64). The Court observed that the asylum authorities should have assessed the risk faced by the applicant, as a member of a religious minority which might be perceived as having committed apostasy (§ 65). Whereas the Court noted that the domestic authorities had accepted as credible the applicant's conversion (§ 68), the Court considered, on the one hand, that they had not sufficiently assessed the overall situation of Christians and Christian converts in Pakistan and, on the other hand, the applicant's conversion, the seriousness of his beliefs, the way he had manifested his Christian faith in Switzerland, how he had intended to manifest it in Pakistan if the removal order had been executed, whether his family had known about his conversion and whether he would be subject to persecution and accusations of blasphemy (§§ 76 and 78-79). Therefore, the Court found that there would be a violation of Articles 2 and 3 of the Convention if the applicant were to be removed to Pakistan without any in-depth and thorough assessment by the Swiss authorities of the overall situation of Christian converts in Pakistan and of the applicant's personal situation (§ 80).

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

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

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Baylac-Ferrer and Suarez v. France (dec.), no. 27977/04, 25 September 2008
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—R—

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Sampanis and Others v. Greece, no. 32526/05, 5 June 2008
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—T—

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—U—

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—V—

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Vizgirda v. Slovenia, no. 59868/08, 28 August 2018

—W—

Wa Baile v. Switzerland, nos. 43868/18 and 25883/21, 20 February 2024
Winterstein and Others v. France, no. 27013/07, 17 October 2013

—X—

X and Others v. Albania, nos. 73548/17 and 45521/19, 31 May 2022

—Y—

Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey, no. 36165/02, 16 December 2008
Yordanova and Others v. Bulgaria, no. 25446/06, 24 April 2012

—Z—

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Ždanoka v. Latvia [GC], no. 58278/00, ECHR 2006-IV
Zornić v. Bosnia and Herzegovina, no. 3681/06, 15 July 2014