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THE RIGHT TO FREEDOM OD ASSOCIATION UNDER THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

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INTRODUCTION

The Convention for the Protection of Human Rights and Freedoms (hereinafter: the Convention) was adopted in Rome on 4 November 1950 by the 15 members of the Council of Europe – an international organization with the main aim of promoting human rights. The Convention entered into force on 3 September 1953. It was amended through the so-called additional protocols to the Convention, 14 of which have to date been signed, and all of which, except the last one, have entered into force[1]. They have either added new rights or amended the Convention's supervision mechanism. The Convention is today binding for all European states except for Belarus.

The Convention symbolizes the reinforcement of the General Declaration on Human Rights in European Standards and is considered to be the Council of Europe's greatest success.

Article 1 provides that the high contracting parties shall ensure to everyone within their jurisdiction the rights and freedoms guaranteed by the Convention. This provision has a twofold meaning. It primarily indicates that the Convention directly creates rights for individuals and that it does not require additional implementation through, for example, adopting laws or other regulations so as to further develop those rights. Moreover, Article 1 indicates that the primary liability for ensuring the rights guaranteed by the Convention lies on the Contracting States.

However, the Convention provides an international (subsidiary) mechanism ensuring the respect of the guaranteed rights. The Convention initially provided for a Commission of Human Rights before which individuals could have filed their request against a state – party to the Convention – for which they deemed had violated a right guaranteed therein. The Commission would firstly give an admissibility decision based on certain formal criteria – the so-called admissibility criteria – prescribed by the Convention (see infra II.2.). Should a complaint be declared admissible, in deciding on its merits, the Commission would adopt a special report as to whether or not the respondent state had violated the applicant's Convention right. The Commission or the respondent state could then submit the case to the Court of Human Rights (hereinafter: the Court or the European Court) whose judgment would then be final. Protocol 11, which came into force on 1 November 1998, amended the supervisory mechanism in that it abolished the Commission, whose role was overtaken by the new Court of Human Rights. The new Court can adopt both admissibility decisions and judgments on the merits. Following a judgment given by a Chamber of seven judges, it is only exceptionally allowed for the applicant or the respondent state to request that the case to be referred to the Grand Chamber composed of seventeen judges, which will in such case render a final judgment. The foregoing is allowed only if the case raises (a) a serious question affecting the interpretation or application of the Convention, or (b) a serious issue of general importance. The execution of the Court's judgments is the task of the Committee of Ministers of the Council of Europe.

The most significant contribution of the Convention lies in the aforementioned supervisory mechanism, since the Convention was the first international instrument allowing individuals to lodge an application against a state before an international forum. Over the years, the Court and the former Commission have developed a large

[1]The entry into force of Protocol No. 14 is expected shortly.

jurisprudence. Their contribution to the protection and promotion of human rights in Europe is immense.

The Convention is legally binding for the Republic of Croatia since 5 November 1997, when the Act on its ratification came into force (Official Gazette, International Treaties no. 18/97). Pursuant to Article 140 of the Constitution, the Convention, like all other international treaties, forms an integral part of the Croatian legal order and is hierarchically superior to domestic statutes. Moreover, the rights guaranteed by the Convention have existed in the Croatian legal system ever since 4 December 1991 and the entry into force of the Act on Human Rights and Freedoms and Rights of Ethnical and National Communities or Minorities in the Republic of Croatia (Official Gazette nos. 65/91, 27/92, 51/00 and 105/00). Section 1 of that Act provided that the Republic of Croatia, in accordance with *inter alia* the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, protected and acknowledged a number of human rights and freedoms enumerated in section 2 of that Act. On the basis of this provision the Constitutional Court of the Republic of Croatia concluded that all rights guaranteed by the Convention were to be considered constitutional rights, i.e. that they had constitutional legal force[2]. Similar provisions are contained in the current legislation generally regulating the area of human rights – the Constitutional Act on Rights of National Minorities (Official Gazette no. 155/02) of 23 November 2002.

Among other rights, the Convention guarantees the right to freedom of association. Article 11 of the Convention reads as follows:

> 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.
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> 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.

The freedom of association enables individuals to protect their rights and interests in alliance with others. Such possibility is of the utmost importance since, from a sociological aspect, association means creation or accession to an organization – which is due to its characteristics able to achieve goals which an individual alone would not be able to achieve at all, or at least not effectively.

The importance and the dual legal nature of the right of association has best been described by Manfred Nowak:

"As with freedom of expression and assembly, freedom of association leis in the overlapping zone between civil and political rights. As a civil right it grants protection against arbitrary interference by the State or private parties when, for whatever reason and for whatever purpose, an individual wishes to associate with others or has already done so. As a political right it is indispensable for the existence and functioning of democracy, because political interests can be effectively championed only in community with others (as a political party, professional interest group, organization or other association for pursuing particular public interests)."[3]

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[2]Constitutional Court decisions no. U-I-892/1994 of 14 November 1994 (Official Gazette no. 83/94), no. U-I-130/1995 of 20 February 1995 (Official Gazette no. 12/95) and no. U-I-745/1999 of 8 November 2000.

[3]Nowak, Manfred: U.N. Covenant on Civil and Political Rights: CCPR Commentary, Kehl-Strasbourg Arlington, Engle, 2005, p. 385.

THE RIGHT TO FREEDOM OF ASSOCIATION

I. GENERAL PART

A. The scope of freedom of association

1. The notion of "association" within the meaning of Article 11 of the Convention

As has been shown earlier, the Court interprets the concept of freedom of association as the right to form or be affiliated with a group or organization pursuing particular aims[4].

The notion of association within the meaning of the Convention has an autonomous meaning, independent of the existing classifications in the respondent states' legal orders.

Association within the meaning of Article 11 of the Convention could be defined as any form of voluntary grouping for a common goal[5]. Even though Article 11 expressly enumerates only one type of association, i.e. trade unions, the foregoing does not exclude others forms of association nor does it offer any particular protection to trade unions. To the contrary, the definition reveals that the Court interprets the term association very broadly, so as to include a number of forms of association. The right to freedom of association shall hence guarantee the right to form and join associations, political parties, religious organizations, trade unions, employer associations, companies and various other forms of association. The Court has on several occasions stressed the importance of political parties, which enjoy special protection under Article 11 bearing in mind their decisive role in a democratic society.

However, an association should be distinguished from mere gathering of people wishing to share each other's company[6]. The existence of an association requires a certain institutional character, i.e. a certain degree of organization (organizational development) as well as duration (stability), which differentiate it from informal social structures or communities of temporary nature also protected under Article 11 but within the right of peaceful assembly. In other words, within a given group of individuals there should be an intention and visible effort to establish an organizational structure[7].

On the other hand, the foregoing does not require an association to have a formal status, such as to be registered or in any other way recognized as a legal person. Article 11 of the Convention protects informal association, provided that they fulfill the minimum degree of duration and organization. The refusal to recognize the status of a legal person to an informal association (e.g. the refusal of registration) may constitute a violation of Article 11 of the Convention[8].

Article 11 of the Convention guarantees the "freedom of associating with others". Therefore, unlike to associations, political and religious parties and other aforementioned

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[4] *McFeeley v. the United Kingdom*, no. 8317/78, Commission's decision of 15 May 1980, Decisions and Reports (DR) 20, p. 44.

[5] *Young, James and Webster v. the United Kingdom*, nos. 7601/76 and 7896/77, Commission's report of 14 December 1979, Series B, no. 39, p. 36, § 167.

[6] For this reason, the Court has, for example, declared inadmissible *ratione materiae* the complaint of British prisoners serving their prison term concerning the prohibition of socializing with other inmates, established for security reasons (see *McFeeley v. the United Kingdom*, cited above (fn. 4)).

[7] Tonuschatm Christian, "Freedom of association", in: Macdonald, R. St. J.; Matscher, F.; Petzold, H. (ed.), The European System for the Protection of Human Rights, Dordrecht-Boston-London-Nijhoff, 1993, p. 393.

[8] See, for example, *Sidiropoulos and others v. Greece*, judgment of 10 July 1998, Reports of Judgments and Decisions 1998-IV.

social structures forming so-called member organizations (communities of persons), this provision does in principle not apply to institutions (establishments) which form the so-called user organizations nor to foundations, because they are not communities of persons but of property serving the achievement of a certain aim.

Article 11 is also applicable to companies (regardless of whether they were founded for economic purposes or not).[9] In the case of *Liebscher and Hübl v. Austria*[10] three attorneys complained among other things under Article 11 of the Convention that their joining in a limited liability company had disabled them from pursuing their attorney practice. Under Austrian law, attorney companies could only be registered as public companies or limited partnerships. The Commission did not declare the application inadmissible for lack of jurisdiction *ratione materiae* (see below II.2.), but as manifestly ill-founded. Observing that the applicants could have joined in one of the two legally permitted forms, the Commission held that the freedom of association did not guarantee the right to a choice of the form of association available under the domestic law.

In the case of *Cesnieks v. Latvia*[11] the Court expressly recognized that the right to freedom of association applied to companies as well. In that case the applicant was a shareholder in a cooperative, but did not have a voting right. The cooperative subsequently transformed into a joint stock company and the applicant obtained shares without voting rights. The newly formed joint stock company refused the applicant's request for payment of the stock value, so he brought an action in the competent court. The Latvian courts having dismissed his action, the applicant complained to the European Court claiming that he had been a member of a joint stock company against his own free will. The Court considered that the case fell within its competence stressing that, even though the majority of cases examined under Article 11 of the Convention indeed concerned associations whose main aim was not acquiring profit, that fact never excluded the application of guarantees contained in that provision to companies. The Court however declared the complaint inadmissible as manifestly ill-founded. It pointed out that the freedom of association encompassed only association of persons and not that of property as well as that the mere fact that the applicant had a share in the share capital without a voting right was not enough to conclude that he had been forced to "associate with others". His complaint was therefore examined under the right to protection of property (ownership) guaranteed by Article 1 of Protocol No. 1 to the Convention.

Companies usually complain about the violation of another Convention right, e.g. the right to protection of property guaranteed by Article 1 of Protocol No. 1 to the Convention, rather than the right to freedom of association. Taking into account the Court's decision in the *Cesnieks* case, one could conclude that this was a better option than relying (solely) on Article 11.

2. Public-law associations

The so-called public law associations, e.g. chambers of doctors, attorneys, public notaries, craftsmen and others, which members of those professions are obliged to join, deserve special attention. Pursuant to the Court's constant case-law, Article 11 of the Convention shall as a rule not be applicable to such associations nor shall the obligation to join such associations lead to a violation of the negative right to freedom of association

[9]As to the possibility of founding so-called not-for-profit companies under Croatian law see section 2, paragraphs 4 and 5 as well as section 32, paragraphs 1 and 2 of the Companies Act.

[10]*Liebscher and Hübl v. Austria*, no. 25170/94, Commission's decision of 12 April 1996.

[11]*Cesnieks v. Latvia* (dec.), no. 56400/00, 12 December 2002.

(in this connection see further below I.B.5.). Even though these are also member organizations, i.e. those of persons like private-law associations, they differ from them in that they were founded by a public law act, they have public powers and their main aim is not the promotion of their members' private interests since they are usually not associated of their own free will. Chambers mainly perform public-law supervision of the members of its profession[12] and thereby primarily promote public interests.

Universities[13] and various public-law student organizations (such as, e.g. in Croatia, student unions of certain universities)[14] fall into the same category.

This approach was first taken by the Court in the case of *Le Compte, Van Leuven and De Meyer v. Belgium*[15]. In that case the applicants claimed that Article 11, further to a positive guaranteed a negative freedom of association. On these grounds the applicants complained about the obligatory membership in the Belgian Medical Association, in particular about the fact that the association had and exercised certain disciplinary powers. Taking into consideration the public-law status of the association, its public powers such as running a register of medical practitioners, supervising their work as well as its regulatory and disciplinary authorities, the Court concluded that such association was not an association within the meaning of Article 11 of the Convention. It was therefore unnecessary to examine whether there had been a violation of the applicants' negative freedom of association. The Court further observed that there had been no limitation of their positive freedom of association because membership in the chamber had not influenced the possibility for doctors, including the applicants, to form their own specialized associations or to join the existing ones. The Court and the Commission reached the same conclusion in respect of public notaries[16], commercial[17], attorney[18], veterinarian[19] and architect[20] chambers, as well as tourist communities[21] and even workers' councils[22].

However, it is not always simple to establish whether or not a given association is of a public-law character. This is particularly the case with associations combining public and private-law elements. In the case of *Chassagnou and others v. France*[23], both the Commission and the Court considered that an association of hunters established by a

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[12]For example, section 132 of the Public Notaries Act provides that the Croatian Public Notaries Association, among other duties, "administers that public notaries perform their duties in good faith and in accordance with the law", whereas section 141 provides that "supervision of the work and conduct of public notaries" is entrusted to the Management board and the president of the Association.

[13]See *the Slavic University in Bulgaria and others v. Bulgaria* (dec.), no, 60781/00, 18 November 2004.

[14]See *X. v. Sweden*, no. 6094/73, Commission's decision of 6 July 1977, DR 9, p. 5; *Halfan v. United Kingdom*, no. 16501/90, Commission's decision of 12 April 1991; and *M.A. v. Sweden*, no. 32721/96, Commission's decision of 14 January 1998.

[15]*Le Compte, Van Leuven and De Meyer v. Belgium*, judgment of 23 June 1981, Series A no. 43.

[16]*O.V.R. v. Russia* (dec.), no. 44319/98, ECHR 2001-V.

[17]*Weiss v. Austria*, no. 14596/89, Commission's decision of 10 July 1991.

[18]*M.A. v. Spain*, no. 13750/88, Commission's decision of 2 July 1990, DR 66, p. 188; and *Bota v. Rumania* (dec.), no. 24057/03, 2 June 2003.

[19]*Barthold v. Germany*, no. 8734/79, Commission's decision of 1 March 1981, DR 26, p. 145.

[20]*Revert and Legallais v. France*, no. 14331/88 and 14332/88, Commission's decision of 8 September 1989, DR 62, p. 309.

[21]*Köll v. Austria* (dec.), no. 43311/98, 4 July 2002.

[22]*Karakurt v. Austria* (dec.), no 32441/96, 14 September 1999.

[23]*Chassagnou and others v. France* [GC], no. 25088/94, 28331/95 and 28443/95, §§ 99-102, ECHR 1999-III.

legislative act (a law), whose statute was essentially determined by that act, was an association to which Article 11 of the Convention applied. In the Court's opinion, private-law elements were prevailing in that association, in particular: a) the fact that the law establishing the association determined subsidiary application of the general law on (private) associations for all issues which had not been regulated by it, and b) the fact that the members of the associations were private persons (hunters and owners of hunting grounds) united for the purpose of hunting, in other words, with the main aim of promoting their private interests. Furthermore, even though public authorities performed certain supervision of the association and approved certain of its internal deeds, they did not exercise regulatory, disciplinary or and other public powers comparable to the ones given to professional associations (chambers). The Court reached the same conclusion in the case of *Sigurður A. Sigurjónsson v. Iceland*[24], finding that the Icelandic taxi drivers' association was an association within the meaning of Article 11 of the Convention. Namely, even though it had certain public powers (performing limited professional supervision), private-law elements were nevertheless prevailing: it was established under private law with the main aim to promote private interests of its members and it enjoyed full autonomy in determining its own aims and internal structure. In other words the fact that the state awarded certain public powers to a private law association had not transformed such an association into a public law one.

B. The content of the freedom of association

Article 11 protects "the freedom of association with others" and contains two aspects: a positive and a negative one. It entails the right to form associations or to join existing ones (positive aspect) as well as the right not to be a member of a certain association (negative aspect). In this chapter we shall firstly describe the content of the positive freedom of association and the protection from dissolution. The negative freedom of association shall be discussed at the end of this head.

1. The aims of associating

The right to freedom of association suggests the right of an association to undertake any activity with a view to achieving any legal aim which may be attained by any individual – natural person. The state cannot deny such freedom of association by simply rendering the aims of an association illegal or banned. Therefore, all domestic provisions, including the Constitution, must be in accordance with the Convention and may be reviewed by the Court. Most cases principally concerning the aims of associating involved political parties or minority associations. The tolerability of restrictions of the freedom of association in those cases was assessed bearing in mind the importance of political parties in a democratic society, as well as the protection of minorities.

An association formed with the aim of altering the political system of a state will remain protected by the Convention for as long as it endeavors to achieve such changes in a peaceful manner. This applies in the first place to political parties, whose promotion of politics different than the one currently in power is crucial for the effective functioning of a democracy[25].

For example, in the case of *United Communist Party of Turkey and others v. Turkey*[26], the Court concluded that an association or a political party shall not be denied the

[24]*Sigurður A. Sigurjónsson v. Iceland*, judgment of 30 June 1993, Series A no. 264.

[25]*Refah Partisi (Prosperity Party) and others v. Turkey* [GC], no. 41340/98, 41342/98, 41343/98 and 41344/98, § 87m ECHR 2003-II.

[26]*United Communist Party of Turkey and others v. Turkey*, judgment of 30 January 1998, Reports 1998-I.

Convention's protection only because the state authorities consider that by its acting it was deteriorating the constitutional order. The states may in principle undertake measures they consider necessary for the protection of legal certainty and constitutional rights of its citizens in conformity with the Convention, but those measures shall be supervised by the Court.

In the case of *Sidiropoulos v. Greece*[27] the applicants, who had considered themselves Macedonians, formed an association under the name of "The Home of Macedonian Civilization". The Greek authorities refused to register the association partly because its founders claimed to be Macedonians and partly because in the meeting of the Conference on Security and Co-operation in Europe they disputed the Greek identity of the Aegean Macedonia. The Court observed that the aims of the association had been perfectly clear and legitimate: the promotion and protection of regional traditions and culture. It generally considered that the inhabitants of a region in a country were entitled to form associations in order to promote the region's special characteristics, and found that Greece had violated the applicants' right to freedom of association.

In the case of *Stankov and the United Macedonian Organization Ilinden v. Bulgaria*[28], the applicants alleged a violation of their right to freedom of association in that they were not allowed to hold a public assembly with the purpose of celebrating certain historical events and that the Bulgarian authorities refused to register their association. The aims set down in the statute of the association were "to unify all Macedonians in Bulgaria on a regional and cultural basis" and to achieve "the acknowledgment of the Macedonian minority in Bulgaria". However, the statute also emphasized that the association did not aim to jeopardize Bulgaria's territorial integrity and that it would not strive to achieve its goals by violent or illegal means. During the Court proceedings, the association claimed that its main activities encompassed the organizing of festivities for celebrating certain historical events important for Macedonians in Bulgaria as well as publishing a newspaper. On the other hand, the State claimed that the statute and the program of the association imperiled the unity of the nation by disseminating ideas of Macedonianism among the Bulgarian population and that it was therefore banned by the Bulgarian Constitution. The Court reiterated that the inhabitants of a region in a country were entitled to form associations in order to promote the region's special characteristics and that the fact that an association asserted a minority consciousness cannot in itself justify an interference with its rights under Article 11 of the Convention.

In the case of *Gorzelik and others v. Poland*[29] (for facts of the case see below under I.D.2.), the Court emphasized the importance of freedom of association for members of minorities. A pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity. Forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights.

However, associations (and in particular political parties) promoting undemocratic aims or using undemocratic means shall not be protected by Article 11 of the Convention.

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[27] *Sidiropoulos and others v. Greece*, cited (fn. 8).

[28] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, no. 29221/95 and 29225/95, § 89, ECHR 2001-IX.

[29] *Gorzelik and others v. Poland* [GC], no. 44158/98, ECHR 2004-I.

In the case of *Refah Partisi (Prosperity Party) and others v. Turkey*[30], the applicant party was prohibited and dismissed by a decision of the Turkish Constitutional Court, finding that it contravened the principles of secularism, one of the fundamental constitutional principles necessary for the existence of democracy. During the Court proceedings, the State considered that nothing could force it to tolerate the existence of political parties aiming at destroying democracy or the rule of law. In trying to determine the limits within which the acts of a political organization enjoy the protection of the Convention, the Court set several criteria. A political party may promote the change in the constitutional order only:

a) if this is done in a legal manner by democratic means, and
b) if the wanted change is in itself compatible with basic democratic principles.

A political party, whose leaders incite to violence or promote politics which denies democracy or is directed against it or against rights recognized in a democratic society, can therefore not rely on the Convention in trying to protect from the sanctions imposed on that account.

When determining the aims of an association for the purposes of Article 11 of the Convention, the Court shall not only consider its official program, name or statements of its leaders. In a number of cases the Court stressed that a program of a political party or statements of the leaders may hide aims and intentions different from those publicly proclaimed. The content of the program and the statements must therefore be compared with the actions of the party and its leaders as well as with the views it generally represents. It is important to establish whether the party incites to violence, riot or any other activity which may be considered as destruction of democratic principles. In the case of *United Communist Party of Turkey and others v. Turkey*, the Court dismissed the State's argument that the choice of the name and the statements of its leaders would pose a threat to democracy.

2. Founding and joining associations. Legal personality.

The right to freedom of association protects from interference by the State with the right to form a new as well as to become a member of an already existing association. However, this right does not include the right to perform certain functions in an association[31].

Even though an association does not have to be a legal person so as to enjoy the protection under Article 11 of the Convention, the refusal to register, i.e. to acknowledge the status of a legal person represents interference with the right to freedom of association and may result in a violation of the Convention. Acquiring legal personality may be very useful for an association since it enables it to autonomously acquire rights and obligations, i.e. to have its own property. As a legal person, an association may, for example, be an owner or open its own bank account.

The right of an association to obtain legal personality has gradually developed in the practice of both the Court and the Commission. In the case of *Lavisse v. France*[32], the French authorities refused to enter into the register of associations an association which promoted the rights of surrogate mothers. However, the association was not banned and pursuant to the legislation in force it enjoyed the legal status of a so called informal

[30] *Refah Partisi (Prosperity Party) and others v. Turkey* [GC], cited (fn. 25).
[31] *Fedotov v. Russia* (dec.), no. 5140/02, 23 November 2004.
[32] *Lavisse v. France*, no. 14223/88, Commission's decision of 5 June 1991, DR 70, p. 218.

association. The Commission therefore concluded that in the circumstances of that case acquiring legal personality had not been crucial to the existence of the association or its ability to perform its activities.

However, in the case of *Sidiropoulos v. Greece* (see above I.B.1.), the refusal of registration of an association resulted in a violation of the Convention. The Court generally concluded that the right of individuals to found a legal entity in order to act collectively in a field of mutual interest was one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning[33].

As to the right to join associations, it should be emphasized that it does not entail the right to become a member of a certain association regardless of the willingness or possible unwillingness of the given association. Article 11 also does not protect the individual from being excluded from an association. However, the State has a positive obligation to protect the individuals from arbitrary exclusions and from those which are contrary to the statute or have difficult consequences for him (e.g. in a case when membership of a trade union is the condition of employment so any exclusion from the trade union automatically results in deprivation of employment)[34].

3. The prohibition of an association

The right to freedom of association guaranteed by Article 11 of the Convention protects from unjustified prohibition or dismissal of an association. In the case of *United Communist Party of Turkey and others v. Turkey*[35], the Court observed that the right guaranteed by Article 11 would be largely theoretical and illusory if it were limited to the founding of an association, since the national authorities could immediately disband the association without having to comply with the Convention. It follows that the protection afforded by Article 11 lasts for an association's entire life and that dissolution of an association by a country's authorities must accordingly satisfy the requirements of paragraph 2 of that provision.[36]

4. Other rights

Associations also have the right to autonomously regulate its internal structure, without interference by the State.[37]

5. Negative freedom of association

Most cases examined by the Court concerning the negative freedom of association involved the right not to be a member of a trade union. This negative right to freedom of association corresponds to the so called positive obligation of the State to protect the holder of such right (further to this obligation see below under I.E.).

In the case of *Young, James and Webster v. United Kingdom*[38], the applicants claimed that their dismissal from work in the British Railway for having refused to join one of the three trade unions, violated their right to freedom of association from Article 11 of the

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[33]*Sidiropoulos and others v. Greece*, cited (fn. 8), § 40. See also *Gorzelik and others v. Poland*, no. 44158/98, § 55, 20 December 2001; *Gorzelik and others v. Poland* [GC], cited (fn. 29), § 88; *United Macedonian Organisation Ilinden v. Bulgaria*, cited (fn. 28), § 57; and, implicitly, *Presidential Party of Morodovia v. Russia*, no. 65659/01, 5 October 2004.

[34]*Cheall v. United Kingdom*, no. 10550/83, Commission's decision of 13 May 1985, DR 42, p. 185-186.

[35]*United Communist Party of Turkey and others v. Turkey*, cited (fn. 26), § 33.

[36]See also cases *Socialist Party and Others v. Turkey*, judgment of 25 May 1998, Reports of Judgments and Decisions 1998-III; *Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey* [GC], no. 23885/94, ECHR 1999-VIII; and *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, ECHR 2002-II.

[37]*Cheall v. United Kingdom*, no. 10550/83, cited (fn. 34), p. 185.

[38]*Young, James and Webster v. United Kingdom*, judgment of 13 August 1981, Series A no. 44.

Convention. The State claimed that this Article did not guarantee the negative freedom of association because that right had been purposely left out when drafting the Convention. The Court did not directly decide whether the Article guaranteed also the negative freedom of association, but instead focused on the fact whether in the specific circumstances of the case there had been a violation of the Convention. Even if Article 11 was not to guarantee the right to negative freedom of association to the same extent as the positive one, the obligation to join a trade union must not always be contrary to the Convention. However, the Court considered that the threat of dismissal and, consequently, the loss of means of life, represented a very serious form of coercion, which was moreover in the present case directed against the workers who had been employed by the British Railway even before introducing obligatory trade union membership. The Court came to the conclusion that such form of compulsion interfered with the mere essence of the freedom of association and on those grounds concluded that there had been a violation of Article 11 of the Convention – the State had violated its (positive) obligation to protect the applicants' negative freedom of association.

In the case of *Sigurður A. Sigurjónsson v. Iceland* (for facts of the case see above I.A.2.), the Court observed that the obligatory membership in trade unions did not exist in most Convention Contracting Parties. To the contrary, most States protected negative freedom of association in various ways, and the obligatory membership in trade unions violated the conventions of the International Labor Organization nos. 87 and 98. Emphasizing that the Convention was a living instrument which needed to be interpreted in line with current circumstances, the Court concluded that Article 11 of the Convention should be interpreted so as to include the right to a negative freedom of association. Bearing in mind that in the instance case the membership of the taxi drivers' association was a condition for the applicant to obtain (and preserve) the permit to perform taxi services, the Court found that there had been an interference with the mere essence of the freedom of association. It also related the Article 11 complaint to those under Articles 9 and 10 of the Convention (freedom of thought and of expression) taking into account the fact that the applicant did not wish to be a member of the association partly due to his disapproval of the politics of diminishing the number of taxis, which limited access to that profession. The State had therefore failed to fulfill its positive obligation and to protect the applicant's negative freedom of association thereby violating Article 11 of the Convention.

In the case of *Gustafsson v. Sweden*[39], the applicant owned a restaurant and complained that the pressure of the trade union (blocking and boycotting of his restaurant) with a view to forcing him to sign a collective agreement, violated his right to freedom of association. Namely, the applicant was not a member of any of the existing employer associations and was consequently not bound by any collective agreement. Through pressure by the trade union, he was forced either to join one of the employer associations thereby automatically acceding to a collective agreement, or to sign a separate collective agreement. The State considered Article 11 inapplicable to the present case because the applicant was not forced to anything. Pointing out that only one of the alternatives open to the applicant would have forced him to join an association, the Court found that the degree of coercion was not such as to significantly influence the freedom

[39] *Gustafsson v. Sweden*, judgment of 25 April 1996, Reports 1996-II.

of association. The measure at issue would not have resulted in interfering with the mere essence of that freedom.[40]

In the case of *Chassagnou and others v. France*[41], the applicants were obliged to become members of a hunter association and to transfer the hunting rights on hunting areas in their ownership, even though they were personally sincerely against hunting as such. The Court concluded that forcing someone by means of law to become a member of an association and thereby binding him to transfer the rights on land in his ownership in order to enable the association to achieve its goals, which are in complete contradiction to that person's beliefs, could not be proportionate to the legitimate aim wanting to be achieved, and therefore violated Article 11 of the Convention.

In the case of *Sørensen and Rasmussen v. Denmark*[42], the Court also found a violation of Article 11 of the Convention due to obligatory membership in a trade union. Unlike in the case of *Young, James and Webster*, the Court pointed out that the negative and the positive aspects of freedom of association should enjoy the same level of protection. Furthermore, it considered that from the point of view of the negative freedom of association there existed no significant difference between situations in which the obligation of membership in a trade union was imposed before or after the actual employment. In this case the Court also concluded that there had been a violation of Article 11 of the Convention because the applicants were forced to become members of a trade union whose political ideas they did not support and that there had been an interference with the mere essence of the freedom of association.

C. The beneficiaries of the right to freedom of association (persons enjoying the protection under Article 11 of the Convention)

The right to freedom of association is in principle enjoyed by individuals (natural persons) forming an association or wishing to join it, as well as the association itself. The foregoing includes individuals who are disabled from joining an association as well as those who are forced to do so.

However, in the case of *Moscow Scientology Church v. Russia*[43], the Court came to the conclusion that members of a church could not be victims of a violation of Article 11 of the Convention resulting in the refusal of the Russian authorities to re-register the church in line with the new legislation, since the alleged violation concerned exclusively the church itself.[44]

D. Legitimate limitations of the freedom of association

The freedom of association is not absolute[45] and may under specific circumstances be restricted. Article 11, paragraph 2 sets certain conditions for the possible limitations. A restriction of the right to freedom of association shall be allowed only if:

a) it is prescribed by law,
b) it pursues a legitimate aim, and

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[40]The Court reached a similar conclusion in the case of *Sibson v. United Kingdom*, judgment of 20 April 1993, Series A no. 258-A.
[41]*Chassagnou and others v. France* [GC], cited (fn. 23).
[42]*Sørensen and Rasmussen v. Denmark* [GC], no. 52562/99 and 52620/99, 11 January 2006.
[43]*Moscow Scientology Church v. Russia* (dec.), no. 18147/02, 28 October 2004.
[44]See also *Holy Monasteries v. Greece*, no. 13092/88, Commission's decision of 5 June 1990.
[45]One of the absolute rights guaranteed by the Convention is the right to freedom of torture, inhuman and degrading treatment or punishment embodied in Article 3 of the Convention. It is not subject to any limitations.

c) it is necessary in a democratic society.

All three conditions must be fulfilled cumulatively. Should only one of them not be met, there will have been a violation of the Convention.

Furthermore, by virtue of Article 15 of the Convention, at time of war or other public emergency the State may take measures derogating from its obligation to respect the right to freedom of association to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Another possible limitation of the freedom of association lies in Articles 16 and 17 of the Convention.

Article 16 provides that Article 11 shall be regarded as preventing the State from imposing restrictions on the political activity of aliens.

Article 17 prohibits the abuse of rights guaranteed by the Convention (including the right to freedom of association) providing that nothing in the Convention may be interpreted as implying any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for therein.

The Croatian Constitution requires similar conditions as the ones prescribed in Article 11, paragraph 2 of the Convention for limitation of constitutional rights and freedoms, including the freedom of association guaranteed by Article 43 thereof. Pursuant to Article 16 of the Constitution[46], the restriction of a right or freedom guaranteed by the Constitution is permitted only if:

a) it is prescribed by law,

b) it pursues a legitimate aim (the protection of freedoms and rights of others, of the legal order, public morals or health), and

c) it is proportionate to the nature of the necessity for restriction in every given case.

Unlike Article 11 of the Convention, prescribing under which conditions a restriction of the freedom of association may be allowed, Article 16 of the Croatian Constitution sets down those conditions in relation to all constitutional rights and freedoms.

In its practice the Court has developed a proportionality test[47], which it applies in every individual case when determining whether there had been a violation of the Convention. This test is applied in cases concerning alleged violations of Articles 8-11 of the Convention as well as those under Article 14 and under Article 1 of Protocol No. 1 to the Convention. On the other hand, the test does not apply in cases involving a potential violation of Articles 2-5 of the Convention or of Articles 6 and 13, which guarantee procedural rights.[48]

The test includes two primary and three further steps. The Court shall firstly examine whether there had been interference by the State with the applicant's right to freedom of

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[46](1) Freedoms and rights may only be restricted by law in order to protect freedoms and rights of others, public order, public morality and health.

(2) Every restriction of freedoms or rights shall be proportional to the nature of the necessity for restriction in each individual case.

[47]We considered here the proportionality test in its wider sense. Proportionality in the strict sense includes examining whether the interference was "necessary in a democratic society", i.e. whether it was proportionate to the legitimate aim pursued (see below II.D.4.).

[48]The Court shall exceptionally apply the proportionality test in the context of Article 6 of the Convention, in cases concerning the right of access to a court – one of the many procedural rights guaranteed therein.

association, and if so, whether the interference, normally resulting in a restriction, was justified.

1. What is considered interference or a restriction?

The State can interfere with, i.e. restrict an individual's right to freedom of association in various ways. It can ban an association and delete it from a public register. It can prohibit an association to undertake certain activities, which it had been or had intended to undertake with a view to achieving its aims. The State can also penalize (criminally or as a petty offence) members of an association or the association itself for engaging in certain activities. Furthermore, it is conceivable for the State to refuse registration of a certain form of association. It is also possible that the State prohibits an individual to join an association, forces him to leave it or imposes certain negative consequences on him on the basis of his membership. In all these cases, as well as in many others, there will have been an interference with the right to freedom of association guaranteed by the Convention.

The Court shall in principle not have a problem in deciding whether or not there had been interference. The States will quite often themselves admit to having interfered with the freedom of association in a given case, and focus their arguments on proving that such interference had been justified.

However, certain difficulties may appear even throughout this first step. In the case of *Ezelin v. France*[49], which admittedly did not concern freedom of association but rather the freedom of assembly, the applicant was an attorney who had participated in an assembly which escalated in violent demonstrations including threats and insults to the police and drawing offensive graffiti on government buildings. The bar association subsequently in disciplinary proceedings punished the applicant for having taken part in the demonstration. In the proceedings before the Court, the State claimed that there had been no interference with the applicant's right to freedom of assembly because he was not in any way prevented from participating in the manifestation or from publicly expressing his beliefs in a professional capacity as he had wished. He was disciplinary penalized only after the demonstration, since his conduct had not been in line with the standards of professional ethics. The Court disagreed with the State's contentions, finding that the term "interference" included measures of criminal nature undertaken not only before or during, but also after the demonstration.

2. Lawfulness

So as to be allowed, interference may not be arbitrary, but must instead be based on law.

The notion of law under the Convention also has an autonomous meaning. A "law" is not only a law in a formal sense. It can also include another statute (e.g. subordinate legislation)[50], Constitution, international treaty to which the State concerned is a party, as well as EC law.

However, it is not sufficient for the act, on the basis of which a State limited the freedom of association, to be a formal legal source within the meaning of the domestic law, but it must furthermore contain certain qualitative characteristics. The law must be accessible (published) and its provisions formulated with sufficient precision to enable the persons concerned to foresee, to a degree that is reasonable in the circumstances, the

[49] *Ezelin v. France*, judgment of 26 April 1991, Series A no. 202.

[50] In this context, it should be borne in mind that any restriction of the right to freedom of association which would not be explicitly based on a statute of subordinate legislation would be contrary to the Croatian Constitution (see Article 16 of the Constitution).

consequences which a given action may entail and to regulate their conduct. This does not require complete precision, which would exclude the necessary interpretation in the application of laws. However, it requires a certain level of foreseeability, which depends on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed.[51]

For example, in the case of *N.F. v. Italy*[52], the applicant was a judge who had been penalized in disciplinary proceedings (by a warning) for being a member of a Freemason lodge, which subsequently prevented him from being promoted professionally. He was punished for having undermined the prestige of the judiciary by committing a "serious breach of judicial duties". The decree on the basis of which the warning had been issued provided that "any judge who fails to fulfill his duties or behaves, in or outside the office, in a manner unworthy of the trust and consideration which he must enjoy will incur a disciplinary sanction". Moreover, the Italian National Council of the Judiciary passed guidelines stating that "judges' membership of associations imposing a particularly strong hierarchical and mutual bond through the establishment, by solemn oaths, of bonds such as those required by Masonic lodges, raises delicate problems as regards observance of the values enshrined in the Italian Constitution". The Court noted that the provisions the disciplinary sanction was based on (the decree and the guidelines) had not been sufficiently foreseeable to enable the applicant to adjust his conduct. The formulation that membership in a Masonic lodge "raises delicate problems", could not give the impression that it was prohibited. The Court further observed that the National Council of the Judiciary itself felt the need to clarify its position in issuing another set of guidelines, which stated in clear terms that the exercise of judicial functions was incompatible with membership of the Freemasons. However, even this occurred a year after the end of the applicant's active membership in the lodge. Consequently, the Court concluded that the applicant's right to freedom of association had been violated.

On the other hand, in the case of *Gorzelik and others v. Poland*[53], the Court found that the foreseeability criteria had been fulfilled. The applicants were prevented from registering their association called "Union of People of Silesian Nationality" as an "organization of a national minority" because the Polish courts concluded that Silesians were not a national minority. Since Polish law provided no definition of a national minority, the applicants considered that the provision on the basis of which the authorities refused their registration had not been sufficiently foreseeable. The Court considered that it would be very difficult to formulate a definition of the term national minority and that any such definition would be too narrow. Moreover, the notion was not defined in any international treaty. Accordingly, the Court concluded that Poland had not violated the foreseeability principle in allowing the courts to interpret the notion of a national minority themselves.

An interference with the freedom of association will normally not be caused by the law itself (*ex lege*), even though such a situation would also be conceivable, but rather by a decision (of a court or an administrative authority) given in applying that law.

Measures restricting the right to freedom of association will usually fulfill this condition. This is so not only because the majority of those measures will indeed be based

[51]See, for example, *N.F. v. Italy*, no. 37119/97, §§ 26-29, ECHR 2001-IX; and *Gorzelik and others v. Poland* [GC], cited (fn. 29), §§ 64-65.
[52]*N.F. v. Italy*, cited (fn. 51), §§ 30-34.
[53]*Gorzelik and others v. Poland* [GC], cited (fn. 29), §§ 66-71.

on law, but also because the Court has not authority to interpret domestic law. In other words, should a decision interfering with the right to freedom of association be based on a law, which was, from the domestic law perspective, misapplied, the Court will nonetheless conclude that such interference was "prescribed by law".

3. Legitimate aim

Should interference be lawful, the Court will establish whether it pursued a legitimate aim. Pursuant to the second paragraph of Article 11 of the Convention, freedom of association may be restricted only:

a) in the interests of national security or public safety,

b) for the prevention of disorder or crime,

c) for the protection of health or morals,

d) for the protection of the rights and freedoms of others.[54]

It is sufficient that a measure interfering with the freedom of association pursues at least one of the abovementioned legitimate aims. It would be possible to interpret those aims very widely. So as to avoid any abuse, the Court established that those terms are to be interpreted narrowly. This means that the freedom of association may not be restricted with a view to achieving another aim, for example the economic well-being of a country (for which it is possible to restrict e.g. the right to respect of private and family life, home and correspondence guaranteed by Article 8 of the Convention)[55]. Moreover, in the Court's view, the content of those terms should not be broadened beyond their usual meaning.

Nonetheless, restrictive measures will often simply fulfill this condition, mostly due to the wide meaning of the terms used.

4. "Necessary in a democratic society"

A measure interfering with the right to freedom of association must be necessary in a democratic society directed at achieving one of the abovementioned legitimate aims. This is a proportionality test in the strict sense, establishing whether the measure was proportionate to the legitimate aim sought to be achieved.

The notion of necessity must be understood in the context of a democratic society – one cherishing pluralism, tolerance, open-mindedness, equality and freedom, as well as encouraging self-determination. Furthermore, the term "necessary" does not bear the same meaning as "indispensable" but also not "allowed", "usual", "useful", "reasonable" or "wishful". In Croatian terminology, the meaning of "necessary" is the closest to the usual meaning of the word "needed".

A measure will be proportionate (and thereby necessary) if it fulfils a pressing social need and if it does not restrict the freedom of association to a larger extent than is necessary for satisfaction of that need. It is therefore essential to carefully find the appropriate balance

[54]The Croatian Constitution enumerates the following general legitimate aims: a) the protection of freedoms and rights of others, b) legal order, c) public moral and health. Article 43, para. 2 of the Constitution contains a specific aim: prevention of violent endangering of the democratic constitutional system, as well as independence, unity and territorial integrity of the Republic of Croatia. In relation to political parties, Article 6, para. 3 of the Constitution foresees the possibility of prohibiting a political party which is, by its program or its violent actions, directed towards demolishing of the free democratic order or endangering the existence of the Republic of Croatia.

[55]*Inter alia*, this transpires from Article 18 of the Convention, which provides that the permitted restrictions to the rights and freedoms guaranteed by the Convention "shall not be applied for any purpose other than those for which they have been prescribed".

between the fundamental right of the individual and the interests of the community as a whole. The measure should at the same time not pose an excessive burden on an individual.

However, the Court leaves the Contracting States certain discretion, considering the state authorities to be better placed to assess the existence of both the need and the necessity of the restriction, given their direct contact with the social process forming their country. The discretion left to the States in assessing the compatibility of measures restricting a Convention right is in the Court's practice called "the margin of appreciation". For this reason, there will in principle be no violation of the Convention should there exist another measure less restrictive to a Convention right than the one chosen in achieving a certain aim, as long as both measures fall within the State's margin of appreciation. On the other hand, the Court shall certainly take into consideration the existence of alternative solutions when ruling whether interference had been proportionate to the aim sought to be achieved.

This margin of appreciation also derives from the subsidiary role of the Court in the achievement of Convention rights. However, it is not unlimited, but goes hand in hand with scrutiny by the Court foreseen by the Convention. This is why the Court shall not refrain from criticizing every measure the State undertakes and justifies by its margin of appreciation. Its scope depends on the circumstances of the case, the nature of the guaranteed Convention right, the nature of the legitimate aim pursued by the interference as well as the intensity of the interference. In cases where the margin of appreciation is narrower, such as cases concerning political parties, the State is called upon to present particularly important reasons in order to justify the imposed restriction. Furthermore, should the legitimate aim pursued by restricting the right to freedom of association involve the protection of rights and freedoms of others, where those right and freedoms are themselves among those guaranteed by the Convention, the margin of appreciation will be wide. On the other hand, where restrictions to freedom of association are imposed in order to protect rights and freedoms not enunciated in the Convention, the margin of appreciation shall be narrow.[56]

It is important to point out that in most cases where the Court found a violation of the right to freedom of association the States had failed to satisfy this particular criterion. In other words, the restrictions they had imposed were not "necessary in a democratic society".

As already stated, the Court stressed on several occasions the importance of political parties which, due to their crucial role in a democratic society, enjoy special protection in the context of Article 11. If Article 11 was to be considered in light of Article 10 of the Convention, which guarantees the freedom of expression, the activities of political parties – forming of political will of citizens – is to be understood as a form of freedom of expression, i.e. as enjoying that right along with others. By their actions, political parties give an invaluable contribution to political dialogue, which forms the core of a democratic society. The margin of appreciation left to the States in cases concerning political parties is therefore very narrow.

In the case of *United Communist Party of Turkey and others v. Turkey*[57], the applicant political party claimed that its dissolution by the Turkish Constitutional Court violated the Convention. That court had dissolved the party as being unconstitutional immediately

[56] *Chassagnou and others v. France* [GC], cited (fn. 23), § 113.
[57] *United Communist Party of Turkey and others v. Turkey*, cited (fn. 26).

upon its registration, because of the word "communist" in its name, but also because of drawing a distinction in its constitution and program between the Kurdish and Turkish nations thereby allegedly promoting separatism. The European Court considered that a political party's choice of name cannot in principle justify a measure as drastic as dissolution, in the absence of other circumstances indicating the party's proclamation of politics posing a serious danger. In any event, such a danger would have in the present case been difficult to prove, since the party was dissolved immediately after it was founded. It did not even begin to operate. As to the alleged enticement to separatism, the Court observed that the party was not in favor of a violent solution of the Kurdish problem, but strived to resolve it through political dialogue. One of the principal characteristics of democracy being the possibility it offers of resolving a country's problems through dialogue, there could have been no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned. The dissolution of the party was therefore not proportionate, i.e. "necessary in a democratic society" for achieving a legitimate aim (in this case the interests of national security) and the Court accordingly found a violation of Article 11 of the Convention.

In the case of *Socialist Party and Others v. Turkey*[58], the applicant political party was also dissolved by the Turkish Constitutional Court because of certain statements given by its president. The European Court observed that those statements invited Kurds to rally together and assert certain political claims, but found nothing in them that can be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. To the contrary, the president of the party stressed loyalty to democratic principles and expressly spoke out against violence as means of political battle. Even though the foregoing statement referred to the idea of forming a federal system in Turkey, which would have been contrary to the constitutional order in force, it was not incompatible with the rules of democracy. The Court considered that it was of the essence of democracy to allow diverse political programs to be proposed and debated, even those that call into question the way a State is currently organized, provided that they did not harm democracy itself. Moreover, the Court also noted that the president of the party was acquitted in the domestic courts where he had been prosecuted in respect of the same statements. Since despite all these facts the applicant party was nonetheless dissolved, the Court found that there had been a violation of Article 11 of the Convention because the measure of dissolution had not been proportionate, i.e. "necessary in a democratic society" for the interests of national security.

The Court reached similar conclusions in the following cases: *Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey*[59] and *Partidul Comunistilor v. Romania*[60].

However, in the case of *Refah Partisi v. Turkey*[61], the Court concluded that the dissolution of the applicant political party by the Constitutional Court had not violated Article 11 of the Convention. The European Court considered that the acts and statements of the party leaders indicated its long-term intentions. The party strived to establish sharia within a plurality of legal systems which would be based on religious affiliation. The

[58] *Socialist Party and Others v. Turkey*, cited (fn. 36).
[59] *Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey* [GC], cited (fn. 36).
[60] *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, 3 February 2005.
[61] *Refah Partisi (Prosperity Party) and others v. Turkey* [GC], cited (fn. 25), § 87.

Court observed that not only they did not exclude recourse to force in order to achieve their goals, but that those goals themselves had been incompatible with democracy. The sharia is not based on principles of political pluralism and the plurality of legal systems would lead to religious discrimination. Moreover, bearing in mind that the party at the time of its dissolution had formed a part of the governing coalition, in the Court's view there had existed a realistic danger that the party may actually realize its intentions. For those reasons, the Court concluded that the party's dissolution had been "necessary in a democratic society".

Similarly to political parties, the Court contributed particular attention to associations of national minorities requesting a change in the constitutional order or simply promoting or protecting its own specificities by making use of its right to free association.

In the case of *Sidiropoulos v. Greece*[62], the Greek courts refused to register the applicant association finding that it intended to dispute the Greek identity of the Aegean Macedonia thereby jeopardizing Greece's territorial integrity. Having considered all circumstances of the case, the Court considered that the aims of the association had been exclusively the preservation and protection of regional traditions and culture. In the Court's view, the conclusion of the Greek authorities was based on a mere suspicion as to the true intentions of the association's founders and the activities it might have engaged in once it had begun to function. The Court did not rule out that, once founded, the association might, under cover of the aims mentioned in its memorandum of association, have engaged in activities incompatible with those aims, but such a possibility, which the national courts saw as a certainty, could hardly have been proved by any practical action as, having never existed, the association did not have time to take any action. If the possibility had become a reality, the authorities would not have been powerless, since the courts would have the authorities to prohibit and dissolve the association exactly due to those reasons. Consequently, the Court concluded that the refusal of registration had not been "necessary in a democratic society" for the protection of national security and public order, and that there had consequently been a breach of Article 11 of the Convention.

However, in the case of *Gorzelik v. Poland*[63], the refusal of the Polish courts to register the applicant association under the name "Union of People of Silesian Nationality" had not breached the Convention. The main reasons for refusal were the name of the association as well as certain provisions of its program, from which it transpired that the association considered Silesians to be a national minority. The Polish courts therefore concluded that the applicant association had attempted to evade election regulations, because the election threshold of 5% was not applicable to "minority organizations". The European Court noted that the refusal had not been a comprehensive, unconditional one directed against the cultural and practical objectives that the association wished to pursue. That measure concerned only a specific problem, which in the context of election legislation could have emerged through use of the association's name and the consequent status acquired by it. Hence, the Court concluded that the measure had been "necessary in a democratic society" for the prevention of disorder and the protection of rights of others.

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[62] *Sidiropoulos and others v. Greece*, cited (fn. 8), § 44.
[63] *Gorzelik and others v. Poland* [GC], cited (fn. 29), § 93.

We shall further examine two cases not directly concerning political parties or minority associations, in which the Commission and the Court considered that the restriction imposed had been "necessary in a democratic society".

In the case of *Van der Heijden v. Netherlands*[64], the applicant was employed with a foundation whose main aim was the protection and promotion of the rights of immigrants. He was dismissed from work after his employer found out that he was a member of a political party which was hostile towards the immigrants. The applicant lost his case in the domestic courts, where he had sought the annulment of the decision of the dismissal and reinstatement. The Commission considered the applicant's dismissal justified because of the impact the keeping of the applicant on staff might have had on the foundation's reputation, particularly in the eyes of the immigrants whose interests it sought to promote. That is why, in refusing to reinstate the applicant, the Dutch authorities had not violated Article 11 of the Convention.

In the case of *Bota v. Romania*[65], the applicant was the president of an association, which had been dissolved by the Romanian courts because of unlawful activities. The applicant was namely an attorney who was not in favor of the obligatory membership in the Bar association, so he founded his own. He firstly founded an association registered for charity purposes, which subsequently decided to found a bar association as an alternative to the official one. The Court accepted the approach of the Romanian courts that the obligatory membership in the bar was necessary in order to maintain the quality of providing legal assistance, so the dissolution of the association for activities contrary to that principle were found to be in conformity with Article 11 of the Convention.

The Court at times adopts a general conclusion that an interference with the right to freedom of association had not been justified without clarifying which of the permissible restrictions had not been satisfied. This is usually done in cases where the reasons for a violation of Article 11 were numerous or intertwined.

In the case of *Moscow Branch of the Salvation Army v. Russia*[66], following the enforcement of new legislation regulating the legal status of religious communities, the Russian authorities refused to re-register the applicant religious organization. They relied on several reasons. The Russian authorities held that since the applicant's founders were foreign nationals, since it was subordinate to the central office in London and since it had the word "branch" in its name, it must have been a representative office of a foreign religious organization ineligible for "re-registration" as (an independent) religious organization under Russian law. Moreover, since the community used the word "army" in its name as well as the fact that its members "served" carrying uniforms, the authorities also concluded that it concerned a paramilitary organization which was undoubtedly going to break the law.

The Court found no reasonable and objective justification for a difference in treatment of Russian and foreign nationals as regards their ability to exercise the right to freedom of religion through participation in the life of organized religious communities, as one of the ways of enjoying the right of individuals to freedom of religion. Furthermore, the law expressly allowed registration of religious organizations whose central bodies were located abroad. The Court also noted that by the time of the events

[64] *Van der Heijden v. Netherlands*, no. 11002/84, Commission's decision of 8 March 1984, DR 41, p. 264.
[65] *Bota v. Romania* (dec.), cited (fn. 18).
[66] *Moscow Branch of the Salvation Army v. Russia*, no. 7288/01, 5 October 2006.

the applicant branch had existed for seven years as an independent legal entity, during which time it never contravened any Russian law or pursued objectives other than those listed in its articles of associations, notably the advancement of the Christian faith and acts of charity. It is undisputable that for the members of the applicant, using ranks similar to those used in the military and wearing uniforms were particular ways of organizing the internal life of their religious community and manifesting religious beliefs. It could not seriously be maintained that the applicant branch advocated a violent change of constitutional foundations or thereby undermined the integrity or security of the State. Since the Russian authorities' decisions were hence not based on law or any proof, the Court concluded that the refusal of registration of the applicant was arbitrary and, consequently, unjustified and found a violation of Article 11 of the Convention, considered in the light of Article 9 guaranteed the right to freedom of religion.

5. Restrictions relating to members of armed forces, police and state administration

The second sentence of the second paragraph of Article 11 of the Convention provides that 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.

In the case of *Council of Civil Service Unions and others v. United Kingdom*[67], the question of interpretation of the phrase "lawful restrictions" arose, especially in the light of the difference between the English and the French Convention text ("*réstrictions légitimes*"). The English version implies that the restriction of the right to freedom of association of civil servants (i.e. members of armed forces, police and state administration) only needs to be in accordance with the law, whereas the French wording "legitimate restrictions" may be interpreted wider, i.e. in such a way that the restriction imposed must be proportionate to the legitimate aim sought to be achieved. In the mentioned case the Commission left this question open, concluding that even if the permissibility of the restriction required not only lawfulness but also proportionality, in the circumstances of the instant case that condition had been fulfilled.

In the case of *Rekvényi v. Hungary*[68], the Court found that the prohibition of policemen to be members of political parties represented a permitted restriction of their right to freedom of association, in particular considering the importance of depolitization of the police in post-communist Hungary. The Court again did not find it necessary to determine whether the permissibility of such a restriction required something more that mere lawfulness. This is due to the fact that the Court in this case had prior found no violation of the right to freedom of expression guaranteed by Article 10 of the Convention because the restriction imposed had been "necessary in a democratic society". Given that this restriction fulfilled that condition, it was clear that the same had been true for the restriction of the freedom of association, even assuming it had been required in the light of the second sentence of Article 11, paragraph 2 of the Convention.[69]

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[67]*Council of Civil Service Unions and others v. United Kingdom*, no. 11603/85, Commission's decision of 20 January 1987, DR 50, p. 228.

[68]*Rekvényi v. Hungary* [GC], no. 25390/94, ECHR 1999-III.

[69]See also the case of *Ahmed and other v. United Kingdom*, judgment of 2 September 1998, Reports 1998-VI.

In the cases *Vogt v. Germany*[70] and *Grande Oriente D'Italia di Palazzo Giustiniano v. Italy*[71], the Court approached this problem in a different manner. The first case concerned a language teacher who had been dismissed from work because of her membership in the Communist party, whereas the second case involved members of a Masonic lodge who were prevented from obtaining a job with the authorities of the local community. In both cases the Court concluded that the notion of a civil servant ("members of state administration") was to be interpreted narrowly and found the second sentence of Article 11, paragraph 2 inapplicable. The cases were consequently examined in light of the general rule contained in the first sentence of the second paragraph of Article 11, and it was ultimately concluded that the restrictions had not been "necessary in a democratic society" and that there had been a violation of the right to freedom of association. Moreover, in the *Vogt* case, the Court indicatively concluded that even if the applicant was to be considered a civil servant, her dismissal had not been proportionate to the legitimate aim sought to be achieved by such interference. The Court thereby recalled its previous conclusion that also the applicant's right to freedom of expression under Article 10 of the Convention had been violated because in the instant case the dismissal had not been "necessary in a democratic society".

E. The States' positive obligations in relation to the freedom of association

Article 1 of the Convention provides that the Contracting Parties have the obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.

This obligation is twofold. The States primarily have the negative obligation to refrain from arbitrary interference with the right to freedom of association. In other words, that freedom may only be restricted under the conditions of the second paragraph of Article 11. Moreover, the States have a positive obligation to ensure the respect of the right to freedom of association. This means that they must (actively) participate in and take appropriate measures with a view to ensuring the effective enjoyment of the right to freedom of association to all persons within their jurisdiction. This will often result in the obligation to legally regulate relationships between private individuals.[72]

The boundaries between the State's positive and negative obligations under Article 11 of the Convention do not lend themselves to precise definition. The applicable principles are nonetheless similar. Whether the case is analyzed in terms of a positive duty on the State or in terms of interference by a public authority which requires to be justified, the criteria to be applied do not differ in substance. In both contexts regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole.[73]

It has been previously mentioned (see above I.B.5.) that in most cases[74] in which the Court had found violations of the negative freedom of association, those violations resulted in the States' failure to fulfill their positive obligation arising out of Article 11 of the Convention. In this context, we therefore mainly refer to those abovementioned cases

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[70] *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323.

[71] *Grande Oriente D'Italia di Palazzo Giustiniano v. Italy*, no. 35972/97, ECHR 2001-VIII.

[72] See, e.g. *Sørensen and Rasmussen v. Denmark* [GC], cited (fn. 42).

[73] See, e.g. *Sørensen and Rasmussen v. Denmark* [GC], cited (fn. 42), § 56.

[74] The foregoing concerns all mentioned cases with the exception of *Chassagnou and others v. France*, in which the State imposed an obligation of membership in an association (in that case, to a hunter association) by virtue of a law.

and continue to analyze a case which does not concern the negative but rather the positive freedom of association, and in which the Convention breach occurred primarily because the State violated its positive, but partly also its negative obligation from Article 11.

In the case of *Ouranio Toxo and others v. Greece*[75], the applicant political party with its seat in the town of Florina promoted among other things the protection of the Macedonian minority in Greece. The party publicly posted its name both in Macedonian and Greek language on the building of its headquarters, which caused a fierce reaction of the local population. First the local priest invited the citizens to a public assembly in front of the party's headquarters, and the same motion was repeated a day after by the town authorities. The assembly escalated into violent demonstrations: the party's headquarters were broken into, the demonstrators attacked the present party members and forced them to hand over the bilingual sign with the party's name, at the same time throwing out the window and setting on fire furniture from the office. During the assembly the party members requested help from the police station located approximately 500 meters away, but the help was denied with the explanation that there were not enough policemen to intervene. Following those events, the public prosecutor did not request the opening of an investigation with a view to identifying the perpetrators. The Court ruled that the Greek authorities by their acts (the appeal of the town authorities to citizens to the assembly), but also by their failure to act (unwillingness of the police and the laxity of the public prosecutor to request an investigation) violated the applicants' right to freedom of association. The Court also concluded that there existed State liability to investigate events leading to a violation of the right to freedom of association caused by individuals (private persons).

II. SPECIAL PART

A. Admissibility of applications concerning the right to freedom of association

In the second Section of the Convention, providing the possibility for individuals (natural persons) and legal persons to directly file their applications with the European Court of Human Rights[76], Articles 34 and 35 provide certain formal prerequisites which every such application must fulfill in order to allow the Court to give a judgment on its merits. These are the so-called admissibility criteria. Should they not be met, the Court shall declare any such application inadmissible. The Court may do so:

a) if it lacks jurisdiction;

b) for non-exhaustion of domestic remedies;

c) if the application is submitted outside the prescribed time-limit[77]; or

c) if it is manifestly ill-founded.

Furthermore, the Court will declare inadmissible all applications which are anonymous, which represent the abuse of right to petition to the Court or which are identical to a pending or a finished case before the Court or any other international forum[78] (the prohibition of parallel proceedings and the *ne bis in idem* principle).

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[75]*Ouranio Toxo and others v. Greece*, no. 74989/01, 20 October 2005.

[76]Article 34 of the Convention expressly mentions "person, non-governmental organization or group of individuals" as entitled to apply.

[77]The application must be filed within a period of six months from the date on which the final decision exhausting domestic remedies was taken.

[78]E.g. before the Human Rights Committee in Geneva, which operates on the basis of the International Covenant on Civil and Political Rights and its additional protocols.

Some of these criteria (lack of jurisdiction or manifest ill-foundedness) may in a slightly different form also appear before the domestic courts when they are called upon to apply the Convention. Unlike the European Court of Human Rights, the domestic (Croatian) court can in such a case not declare an action claiming violation of the Convention inadmissible, but must dismiss it as unfounded. In any event, an action not fulfilling the procedural requirements of the domestic law, in which the plaintiff claims a violation of Convention rights, should be declared inadmissible.

1. Jurisdiction

First of all, it needs to be established whether the Court has jurisdiction to examine a given case.

The Court is obliged to examine the question of its own jurisdiction of its own motion, which means that it can deny jurisdiction even if the respondent States does not rely on that argument or does so outside the prescribed time-limit.[79] The Court can decide so even against the will of the parties who agreed that it was competent to examine the case.[80]

The Convention provides three types of competence which must be cumulatively fulfilled in order for the Court to examine an application:

a) personal jurisdiction (*ratione personae*),

b) temporal jurisdiction (*ratione temporis*),

c) material jurisdiction (*ratione materiae*).

a) Competence *ratione personae*

The Court's lack of jurisdiction under this criterion can occur in two situations.

An individual or a legal person is not allowed to institute Convention proceedings against another individual or another legal person. The parties to the Convention are only the States and only they can be proceeded against before the Court. Furthermore, under international law the States may be held liable only for acts committed on their territory or on territory on which they exercise "effective control".[81] In such a case, competence *ratione personae* transforms into its specific form of competence *ratione loci* (*ratione teritorii*).

It is also conceivable that the applicant may not be the victim of a violation of the Convention (not the injured party)[82] or that he looses this status during the Court proceedings. In such situations, the Court is most likely to declare an application inadmissible for lack of competence *ratione personae*, but occasionally rather as manifestly ill-founded (see below II.A.4.).

b) Competence *ratione temporis*

Pursuant to general rules of international law, provisions of international treaties do not have retroactive effect, i.e. they are not binding to a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.[83] It should be noted that the general interpretation of legal retroactivity, including in the context of international law, agrees that legal provisions (and international treaties) may be applied to facts occurring prior to

[79] *Blečić v. Croatia* [GC], no. 59532/00, § 67, 8 March 2006.

[80] *Nylund v. Finnland* (dec.), no 27110/95, ECHR 1999-VI.

[81] See in the first place *Banković and others v. Belgium and 16 other Contracting Parties* (dec.) [GC], no. 52207/99, ECHR 2001-XII; and *Issa and others v. Turkey*, no. 31821/96, 16 November 2004.

[82] In other words, the Convention does not allow for a so-called *actio popularis*.

[83] Article 28 of the Vienna Convention on the Law of Treaties of 23 May 1969.

its entry into force in so far as those facts have not already produced certain legal effects in line with preceding provisions. The prohibition of retroactivity essentially means that new regulations should not modify already created legal effects (i.e. those originating from the application of old regulations to facts occurring before the new regulation's entry into force).[84]

The temporal jurisdiction is also of utmost importance for the domestic courts because they cannot (are not allowed) to apply the Convention to acts rendered, facts occurred or situations finished prior to its entry into force in respect of the Republic of Croatia. If the domestic authorities apply the Convention as an international treaty, they are limited by Article 28 of the Vienna Convention on the Law of Treaties. If, on the other hand, they apply it as a law (the Convention is incorporated in the Croatian legal system as a law), the domestic authorities are limited by the constitutional prohibition of retroactive application of laws (Article 89, paragraph 4 of the Croatian Constitution).

The application of law in time, including that of the Convention, may and does lead to extremely complicated legal problems. For instance, how should one answer the question whether the European Court would be competent to examine an alleged violation of Article 11 of the Convention, which occurred by the refusal of the state authorities to register an association, whereas the final administrative decision was given prior to the Convention's entry into force but the Administrative Court's judgment and the Constitutional Court's decision, both respectively dismissing the administrative action and the constitutional complaint against that administrative decision?[85]

c) Competence *ratione materiae*

The Court will also lack jurisdiction in cases where the applicants allege violation of a right not guaranteed by the Convention, such as the right to work, the right to a pension, to lodging etc.

Further to the obvious cases of material lack of jurisdiction, the Court sometimes faces the more subtle ones. The Court will not be competent to examine cases in which the violation relied on relates to a Convention right, but not interpreted as broadly as the applicants consider. For instance, the Convention shall not apply to those forms of association which are in the Court's practice not considered to be an association (see above I.A.). In other words, in such cases the Court will declare the application inadmissible.

Competence *ratione materiae* is also relevant for the domestic authorities called upon to apply the Convention. Should one of the parties to court proceedings insist on the application of the Convention, relying on a right not guaranteed therein or interpreting that right too widely, it is logical that the domestic court shall not apply the Convention, i.e. that, in its response to such an argument, it shall consider the Convention inapplicable to the case at issue.

2. Exhaustion of domestic remedies

Article 35, paragraph 1 of the Convention requires the applicant to exhaust all available domestic remedies prior to addressing the Court.

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[84]For general theory of retroactivity see Roubier, Pail, Droit transitoire (Les conflits de lois dans le temps), Paris, Dalloz et Sirey, 1960. For the application of that theory in international law see Tavernier, Paul, Recherches sur l'application dans le temps des actes et des règles en droit international public ; problèmes de droit intertemporel ou de droit transitoire, Paris, Librairie générale de droit et de jurisprudence, 1970.

[85]The Court's temporal jurisdiction was largely discussed in the case of *Blečić v. Croatia* [GC], cited (fn. 79).

The exhaustion rule stems from the customary international law pursuant to which a foreigner claiming that another state violated some of his rights must, before turning to the country of his citizenship for diplomatic protection, exhaust all available legal means in the state committing the alleged violation. Moreover, from the international law point of view, it would be difficult to consider as true will of the state a decision or an act of a lower body in the hierarchy of state authority. In such a case the true will of the state may with certainty only be established once the final instance gave its ruling on the act or decision of the hierarchically lower body of the state authority.

Furthermore, Article 1 of the Convention provides that the contracting parties have the obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention. The foregoing suggests that the application and the enforcement of the Convention primarily lie on the contracting states, whereas the Court functions merely as a supervisory body, as a secondary (subsidiary) mechanism controlling that implementation.

The requirement of exhaustion of all available domestic legal remedies should not be understood literally. Namely, the Court requires that only those remedies be exhausted which are effective, i.e. capable of putting straight the alleged violation of the Convention. In order to be effective, domestic remedies must be "legal", i.e. the body deciding them must do so by way of applying legal regulations rather than, e.g. discretion or some other non-legal criterion. This is why addressing an ombudsman is not considered to be an effective legal remedy and why the applicant is not required to exhaust it prior to addressing the Court.

Effectiveness of a remedy does not imply that the applicant has the right to a favorable outcome of the proceedings instituted with a view to eliminating an alleged violation of the Convention. It suffices that the competent state authority has the power to decide the merits and, should the outcome be favorable for the applicant, to eliminate the violation of the Convention (e.g. by quashing the decision violating the right to freedom of association or awarding damages).

3. Prescribed time-limit

The application should be filed with the Court within a period of six months from the date of the service on the applicant or his representative (usually the attorney) of the final decision exhausting the last effective domestic remedy.

If in a given case there exists no effective domestic remedy, the six-month time-limit starts on the date the violation occurred.

In cases of so-called continuing violations of the Convention (e.g. unjustifiably long duration of court proceedings, violating the right to a hearing within a reasonable time guaranteed by Article 6 of the Convention), the time-limit does not last for as long as the violation lasts itself. The time-period will begin to run only once such a violation discontinues (e.g. when the proceedings come to an end).

4. Manifestly ill-founded

This inadmissibility criterion is of a specific nature in that the Court, in deciding whether an application is manifestly ill-founded or not, actually considers its merits. Nonetheless, the Court shall not dismiss a manifestly ill-founded application, but shall instead declare it inadmissible.

An application is manifestly ill-founded when it is incomprehensible, unsubstantiated or unproven and hence impossible to examine, or when the facts relied on by the

applicant are manifestly incorrect (which often transpires already from the documents attached to the application form).

However, an application shall also be manifestly ill-founded when there exists an already well-established case-law of the Court that a certain legal issue complained of by the applicant does not cause a violation of the Convention. In other words, the Court had already examined the merits of a number of similar cases eventually dismissing them finding no violation of the Convention. It is therefore unnecessary to examine the merits of every new application raising the same issue, but suffices to declare such applications manifestly ill-founded.

B. The relationship between the right to freedom of association and other rights guaranteed by the Convention

Facts of the case leading to a violation of the right to freedom of association may very often lead to a violation of another Convention right. It is also likely that facts of a particular case do not directly indicate a violation of Article 11, but of another Convention Article, in which case the right to freedom of association may be protected indirectly. Finally, the Court frequently considers violations of Article 11 in light of other provisions of the Convention.

The freedom of association is repeatedly associated with the freedom of expression guaranteed by Article 10 of the Convention. In the case of *United Communist Party of Turkey and others v. Turkey*[86], the Court reiterated that notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10 since the protection of opinions and the freedom to express them is one of the objectives of the freedoms of association. Should the applicant rely on both Articles, the Court may examine the application under Article 10 and, if it finds a violation of that provision, conclude that there was no need to examine it under Article 11. However, the Court can also examine the case solely under Article 11 and, in a case of violation, find that no separate issue arose under Article 10 since Article 11 is *lex specialis* thereto. The third possibility is that the Court finds or does not find a violation of one of those Articles and automatically extends the same conclusion to the other.[87]

A similar relationship exists between Article 11 and Article 9, guaranteeing the right to freedom of thought, conscience and religion. This right includes the freedom, either alone or in community with others and in public or private, to manifest one's religion or belief, in worship, teaching, practice and observance. As previously mentioned (see above I.B.5.), in the cases of *Chassagnou and others v. France* and *Sigurður A. Sigurjónsson v. Iceland*, the Court noted that Article 11 needed to be examined in the light of Article 9 of the Convention and found a violation of the negative right to freedom of association, among other things because the applicants had been forced to become members of associations whose activities were contrary to their beliefs. However, Article 9 will sometimes fall to be examined in the light of Article 11, particularly in cases when an applicant complains about state interference with internal issues of a religious organization.[88] In cases where the applicant complains both about the violation of Article 9 and Article 11, should the Court find a violation of the Convention, it will frequently

[86] *United Communist Party of Turkey and others v. Turkey*, cited (fn. 26), § 42.

[87] See, for example, *Vogt v. Germany*, cited (fn. 70), where the Court firstly concluded that there had been a violation of Article 10 of the Convention and subsequently reached the same conclusion in respect of Article 11. See also the case of *Rekvényi v. Hungary* [GC], cited (fn. 68), where the Court found no violation of Article 10 of the Convention, and accordingly none of Article 11.

conclude that the violation occurred in respect of Article 9, without examining Article 11.[89]

In respect of Article 3 of Protocol No. 1 to the Convention guaranteeing the freedom to free elections, in the Court's practice it is considered to be a *lex specialis* to Article 11 of the Convention.[90]

Article 8 of the Convention guarantees, *inter alia*, the right to respect for home. In the case of *Niemetz v. Germany*[91], the Court interpreted the notion of "home" so as to include business premises. Since this approach is applicable even in cases in which the applicants are not only natural but legal persons[92], it would follow that business premises of an association also fall to be protected under Article 8 of the Convention.

Article 14 of the Convention prohibits any discrimination in the enjoyment of rights and freedoms recognized by the Convention, including the right to freedom of association. Discrimination is prohibited on any grounds, such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The foregoing was reiterated by the entry into force of Protocol No. 12 containing the general prohibition of discrimination, i.e. prohibits discrimination not only in relation to rights guaranteed by the Convention, but also any other right protected by law. Should an applicant, further to an Article 11 complaint, also complain about discrimination in conjunction with that freedom, having examined the complaint under Article 11, the Court shall usually conclude that there was no need to examine the case under Article 14. The Article 14 complaint shall be examined separately only in cases where the evident inequality in treatment relating to the enjoyment of the right to freedom of association represents an important aspect of the case.[93]

Articles 6 and 13 of the Convention contain certain procedural safeguards. Article 6 guarantees the right to a fair hearing in determination of one's civil rights and obligations. It includes the right to have a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 13 guarantees the right to an effective remedy before the national authorities to anyone whose rights or freedoms as set forth in the Convention have been violated. The possibility of application of Article 6 to domestic proceedings concerning the right to freedom of association depends on the dual character of that right. As shown above, the freedom of association can be both a civil and a political right. Hence, should the dispute concern the enjoyment

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[88]*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-IX; and *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, § 73, 16 December 2004.

[89]See, for example, the case of *Metropolitan Church of Bessarabia and others v. Moldova*, no. 45701/99, §§ 141-142, ECHR 2001-XII, in which the Court found that Moldova had violated Article 9 of the Convention in refusing to recognize and register the applicant church as a religious organization, concluding that there was no need to examine whether this situation also caused a violation of Article 11. See also *Hasan and Chaush v. Bulgaria* [GC], cited (fn. 87), § 91.

[90]See *Ždanonka v. Latvia* [GC], no. 58278/00, § 141, 16 March 2006. Also see the case of *United Communist Party of Turkey and others v. Turkey*, cited (fn. 26), § 63, where the Court, in finding a violation of Article 11 of the Convention, decided that there was no need to separately examine the complaint under Article 3 Protocol No. 1 to the Convention.

[91]*Niemetz v. Germany*, judgment of 16 December 1992, Series A no. 251-B, §§ 29-33.

[92]See, for example, the case of *Société Colas Est and others v. France*, no. 37971/97, ECHR 2002-III.

[93]See primarily *Moscow Branch of the Salvation Army v. Russia*, cited (fn. 66), §§ 100-101. See also Sidiropoulos and others v. Greece, cited (fn. 8), § 52; *Socialist Party and Others v. Turkey*, cited (fn. 36), § 55 and *Refah Partisi (Prosperity Party) and others v. Turkey* [GC], cited (fn. 25), § 137.

of the freedom of association as a political right – for instance, in disputes involving political parties – Article 6 shall not apply.[94] In such a case the procedural protection of the right to freedom of association shall be ensured by Article 13 of the Convention. In all other situations, i.e. cases concerning the enjoyment of the right to freedom of association as a civil right – for example, in disputes concerning the registration of an association – Article 6 will be applicable.[95]

[94]See *Refah Partisi (Prosperity Party) and others v. Turkey* (dec.), nos. 41340/98, 41342/98, 41343/98 i 41344/98, 3 October 2000.
[95]See, for example, APEH *Üldözötteinek Szövetsége and others v. Hungary*, no. 32367/96, ECHR 2000-X.

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