

Identity Controversies Before the European Court of Human Rights: How to Avoid the Essentialist Trap?

By Julie Ringelheim

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«...if the modern 'problem of identity' was how to construct an identity and keep it solid and stable, the postmodern 'problem of identity' is primarily how to avoid fixation and keep the options open».
Zigmunt Bauman (1)

I. Introduction

[1] In the last few years, several cases raising a very similar issue have been brought before the European Court of Human Rights (ECHR): all these disputes are centred around the identity of a certain group which the applicants claim to defend, while the State contests either the mere existence of this group as distinct from the rest of the population, or the terms used by the applicants to describe it. Two of these cases – *Sidiropoulos and others v. Greece*(2) and *Gorzelik and others v. Poland*(3) – bear upon the refusal of national Courts to register an association created to promote a 'minority culture' – the 'Macedonian' one in the first instance, the culture of the 'Silesian national minority' in the second. The Greek government argues that 'Macedonians' do not constitute a distinct ethnic group, and that the claiming of a separate 'Macedonian identity' is an attack against Greek symbols and history, if not against the territorial integrity of Greece. In the Polish case, registration was refused on the ground that the association wrongly alleged that the 'Silesians' constitute a 'national minority', while, according to domestic Courts, they are 'only' an 'ethnic group'. The other cases concern measures or sanctions imposed on the applicants because of the stance they took with respect to a particular community: the conviction of a Greek MP for having used the term 'Turks' during the electoral campaign to address the Muslim population of Western Thrace in Greece (*Ahmet Sadik v. Greece*);(4) the dissolution of political parties in Turkey for having stated in their programme that 'Kurds' constitute a 'minority', a 'people' or a 'nation' (*Unified Communist Party of Turkey (TBKP) and others v. Turkey; Socialist Party of Turkey and others v. Turkey; Party of Freedom and Democracy (Özdep) v. Turkey*);(5) finally a prohibition on organising public meetings issued against an association promoting the alleged 'Macedonian' culture and history in Bulgaria (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*).(6)

[2] These cases confront the European Court with one of the most debated questions of our time: What is cultural identity? How can one assert whether or not a collective cultural identity exists? In the field of international law, these interrogations are echoed by the well-worn discussions about the definition of the concept of 'minority'. Given the complexity of these issues, which, in theory, should be treated by sociologists and anthropologists rather than lawyers, another problem arises (7) is the European Court qualified to decide on such matters? But if not the Court, who could legitimately decide? Leaving the appreciation to domestic authorities involves the risk of reinforcing policies of denial or repression of certain minority identities. Endorsing the applicants' views, however, might be just as problematic, as they claim to speak for a whole group of persons who do not necessarily share their definition of their identity. In fact, the analysis of both parties' arguments in those cases suggests that they all tend to rely, to a certain extent, on essentialist conceptions of identity, which heavily bear the mark of nationalist ideology. Typical of this approach is to see collective identity as a given, "as based on some "essence" or set of core features shared by all members of the collectivity and no others" (8) . This view has been widely criticized in the social science literature. Numerous authors writing on ethnicity and nationalism have stressed that identities are not natural but *socially constructed* phenomenon, the product of processes embedded in historical and political circumstances. The social constructionist approach also insists that identities are fragmented, contested, constantly reinterpreted or

renegotiated through interactions between groups and individuals;(9) they are "a 'production', which is never complete, always in process".(10)

[3] This paper argues that, considering the intricacy of the issue, the European Court, in its judgments, takes a rather wise position. While condemning the State in most of these cases for violating one of the rights guaranteed by the European Convention of Human Rights, it abstains from formulating any opinion on the issue of identity itself. Instead of trying to decide for or against the contested identity, it seeks to ensure that people are free to express views on and debate such matters, even if they clash with dominant or official conceptions. While stating that the European judges endorse a constructivist approach of identity would certainly be excessive, the stance they take is at least consistent with the idea that identities are constructed, negotiated and contested, rather than fixed and natural.

II. The Government's Views

[4] In a nutshell, the governments' defence is based on the contention that the applicants' endeavours to promote the distinct identity of a group within the population threaten the country's national unity and territorial integrity and/or the equality of citizens. However, significant differences in their lines of argument can be observed.

[5] The Greek and Bulgarian governments, in the two cases bearing on the alleged 'Macedonian minority' – *Sidiropoulos and others v. Greece*;(11) *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (12) –, take a very similar stance. They both deny the existence of a 'Macedonian' culture or ethnic group. According to them, those who pretend to be of 'Macedonian ethnical origin' are in truth 'Greek Slavic-speakers' or 'ethnic Bulgarians'. In support of this contention, Greek and Bulgarian authorities both refer to historical and sociological evidence. The Greek Court of Appeal's decision, quoted in the ECHR's judgment, traces back the history of Macedonia to the Antiquity in order to establish the 'Greek-ness' of the Macedonian region and the inexistence of a 'Macedonian' separate identity.(13) The government claims before the Commission that

"the Greek people has the right to protect Macedonia which belongs to it historically and culturally and lies within its territory and which the Slavs of Skopje want to appropriate for themselves" (14) .

In a similar vein, the Bulgarian government explains to the European Court that the "so-called 'Macedonian nation' was proclaimed for the first time by a resolution of the Communist International. Before that no reliable historical source had ever mentioned any Slavic population in the region other than the Bulgarian population"(15) . In its view, the applicant association "aspired to create a Macedonian nation among people belonging to the Bulgarian nation". Their activities were aimed "at converting the Bulgarian population into a Macedonian one and then separating the region from the country."(16)

[6] Both governments, therefore, contend that the applicants' attempt to promote a 'Macedonian' identity constitutes a threat for their national culture, history and identity. They further allege that the applicants' real objective is to seek secession of their region from Greece/Bulgaria. This line of reasoning reflects the two basic tenets of classical nationalist thinking: first, that humanity is divided into clearly distinct 'nations', conceived as natural communities united by a specific, authentic culture, whose origins lie in an immemorial past. Secondly, that each nation is attached to a certain territory and entitled to form its own state on it. In the words of Ernest Gellner:

« The nationalist principle requires that the political unit and the 'ethnic' one be congruent. In other words, given that ethnicity is basically defined in terms of shared cultures, it demands that everyone, or very nearly everyone, within the political unit be of the same culture, and that all those of the same culture be within the same political unit. Simply put: one culture, one state. » (17)

This assumption explains the close connection established by Greece and Bulgaria between cultural and territorial claims. Their reasoning rests on a very rigid conception of identities: they are perceived as fixed, uniform and mutually exclusive. Nations are viewed as clearly bounded entities. This excludes the possibility of an individual belonging to two cultures at the same time. National identities, moreover, are conceived as a historical/sociological 'truth', whose existence can be proved 'scientifically'. In this logic, law appears as a mere reflection of 'social facts'.

[7] By contrast, the Turkish government, in the cases concerning the dissolution of political parties because of the stance they took on the Kurdish issue,(18) bases its defence primarily on constitutional principles. It argues that the statutes and programme of the political parties dissolved challenge "the very principles underpinning the State":

"By drawing a distinction ... between Turks and Kurds, referring to the Kurds' "national" identity, requesting constitutional recognition of "the existence of the Kurds", describing the Kurds as a "nation" and asserting their right to self-determination, the TBKP had opened up a split that would destroy the basis of citizenship, which was independent of ethnic origin" .(19)

Interestingly, the Turkish government seems to admit that Kurds do form a distinct group, but it opposes its recognition in the realm of the law. Its reasoning appears to be based on a distinction between identity as 'social' fact and identity as a 'legal' reality. This view is backed by the Turkish Constitutional Court's decision, which states: "national unity was achieved through the integration of communities and individuals who, irrespective of their ethnic origin and on an equal footing, formed the nation and founded the State". And it adds: "Like all nationals of foreign descent, *nationals of Kurdish origin could express their identity*, but the Constitution and the law precluded them from forming a nation or a minority distinct from the Turkish nation" .(20) 'Nations' and 'minorities' seem to be conceived here as mere 'legal construct': these entities exist only if the legal order recognises them as such. In this perspective, Kurds could not claim recognition of their existence as a distinct group, not because they do not exist but because, according to the Turkish government, it would be contrary to the Turkish constitutional order .(21)

[8] This line of arguments is of course extremely ambivalent. For the 'Turkish' category, which allegedly subsumes the citizens' various cultural identities, is itself not culturally neutral. The principles of 'equality of citizens' and 'indifference to ethnic origin' serve to legitimise, in practice, the repression of all kinds of expression of a non-dominant culture. (22) Like in the former cases, the mere assertion of a distinct identity is deemed as a threat to territorial integrity. Yet, it is here the recognition of a discrepancy between 'social' and 'legal' reality, which serves to justify a set of laws designed to construct, enforce and preserve one unified national identity.

[9] The Polish government's stance is still different but has something in common with the two positions just described. The applicants in the *Gorzelik* case (23) complain that domestic courts refused to register their association, because of its memorandum laying down that it would constitute an organisation of the 'Silesian national minority'. The Polish government alleges that the applicants tried to use the procedure designed for the registration of association in order to obtain the status of 'national minority' and benefit from the privileges granted by the law to minorities, whereas 'Silesians' were not a 'minority', but only an 'ethnic group', as was ruled by domestic Courts. The problem here was thus to determine which sort of group could fit the notion of minority as a legal category. Since neither the Polish legislation nor international law provides any definition of this notion, the Court of Appeal and the Supreme Court relied on their own understanding of the term, which, again, denotes the influence of nationalist conceptions. The Court of Appeal describes 'national minorities' as groups linked to a nation, which forms the majority of another state. Therefore, in order to determine whether 'Silesians' could benefit from the minority status, the Court examines whether they constitute a nation. Like the Greek Court in the *Sidiropoulos* case, the Court relies on historical and sociological studies, and concludes from its inquiry:

"On the whole, sociologists agree that the Silesians constitute an ethnic group and that [they] do have some features of a nation but that those features are not fully developed. That ... means that the awakening of their national identity is still at a very early stage. A nation exists only when there are no doubts as to its right to exist." (24)

[10] In other words, since the Silesians are not a nation, they cannot be considered as a 'minority', even though they constitute an 'ethnic group'. Polish authorities, therefore, do not oppose the idea that diverse groups exist among the Polish population. Yet, in order to benefit from the *legal* status of minority, and from the special rights it entails, it is not enough to demonstrate a distinct cultural identity. In their view, the status of minority corresponds to a specific 'socio-historical' reality, i.e. the enjoyment of a 'national identity'. Although they show a greater openness to diversity than the three other states, they still rely on a very rigid notion of identity, as a fixed unit with permanent features: people have either an 'ethnic identity' or a 'national one', and this can be established as an 'objective fact'.

III. Ambiguity of the Applicants' Claims

[11] The applicants' claim to defend a determinate 'ethnic' or 'national' identity is not without ambiguity either. In fact, the people who are supposedly included in this identity do not necessarily perceive themselves in the way they are described by the applicants. It is interesting to note that all these disputes concern 'border-regions' like Macedonia, Silesia, or Kurdistan; regions which have always been situated at the margin of the political entity they were part of, at the crossroad of various cultures, and characterised by the ethnic, linguistic and religious complexity of their population.(25) Since the rise of nationalist ideology in the 19th century, these regions have been fiercely claimed by competing nationalist movements. In consequence, the identity of the local population, which have been subject to various pressures to identify with one or another national group, is much more ambiguous than the applicants would like to admit. In the case of Macedonia in particular, anthropological studies have stressed the numerous divisions among the inhabitants of this region in Greece (26) as well as in Bulgaria.(27) about how they want to be defined. With regard to Greek Macedonia, J. K. Cowan observes that "[m]ost of the subjectivities produced have entailed identification both with Slavic elements and with aspects of the hegemonic Greek norm, but in highly varied combinations." However, this author argues that the international legal category of 'minority' had a large influence on the way the local population's identity was recast by Macedonian activist movements. According to her analysis, in order to gain the label of minority, which entails the promise of getting international support for their cause, Macedonian movements have sought to fix the meaning of multiple, fluid and situational identities; "to transform an internally fractured population into a cohesive and distinctive group."(29) She thus concludes that the controversy about the existence of a Macedonian minority is not only a struggle between the state and the alleged Macedonian community, it is also "a struggle within the contested population over how it is to be defined."(30)

IV. The Court's Judgments

[12] Faced with these competing identity claims, the Court adopts an interesting stance. It actually avoids giving an opinion on whether the controversial cultural identity exists or whether the terms used by the applicants to define it are correct.(31) Yet, this does not impede it from taking a clear position on the disputes at stake. In all the cases examined, except for *Ahmet Sadik v. Greece* (32) and *Gorzelik and others v. Poland*, (33) it condemns the state for breaching one of the rights enshrined in the Convention. But rather than trying to solve the issue of identity, the Court concerns itself with guaranteeing that individuals are free to define themselves in the way they wish, to express attachment to a certain community, and to associate in order to promote a culture or defend a group they consider to belong to, even if their views do not fit with the dominant conception of national culture and history.

[13] The Courts rejects without hesitation the Greek government's arguments in the *Sidiropoulos* case, declaring that the aims of the association founded by the applicant, which consists in the preservation and development of their region's folk culture, were perfectly legitimate: "the inhabitants of a region in a country are entitled to form associations in order to promote the region's special characteristics, for historical as well as economic reasons." And it adds:

"Even supposing that the founders of an association like the one in the instant case assert a minority consciousness, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Section IV) of 29 June 1990 and the Charter of Paris for a New Europe of 21 November 1990 – which Greece has signed – allow them to form associations to protect their cultural and spiritual heritage. (35)

This view is further developed in the *Stankov* Judgment.(36) The Court rules that the applicant's intention to commemorate certain historical events as 'Macedonian' ones, while the State and the majority population consider them as moments of the Bulgarian history, did not constitute a sufficient ground for prohibiting this celebration. It insists that

"the fact that what was at issue touched on national symbols and national identity cannot be seen in itself ... as calling for a wider margin of appreciation to be left to the authorities. The national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views no matter how unpopular they may be." (37)

The protection granted by the Court also covers the expression of views and claims related to the legal status of a cultural group within the political system. In the *Unified Communist Party of Turkey (TBKP)* case, the Court

asserts that "there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population". (38) In later cases, it further stresses that the fact that a political party's programme appears incompatible with the current structures of the State "does not make it incompatible with the rules of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself." (39)

[14] In *Ahmet Sadik v. Greece*, the Court held that domestic remedies had not been exhausted and, therefore, did not consider the merits of the case. (40) The *Gorzelik* judgment thus constitutes the only real exception in this series of cases. In reaching the conclusion that there has been no breach of the Convention, the Court emphasizes that the registration of the applicants' association would have been allowed, had they accepted to modify the association's name and one of its memorandum's provisions, as domestic authorities asked them to do. It also underlines the similarity between the words used in the contested provision and those found in the section of the Law on Parliamentary Elections granting "registered organizations of national minorities" an exemption from the threshold of votes required to participate in the distribution of seats in the Parliament.(41) In these circumstances, the Court deems that the Polish authorities' contention that the applicants' aim was to claim the privileges granted by Polish law to minorities "would not seem to have lacked a reasonable basis."(42) Noting that the applicants could have easily dispelled these doubts by accepting the compromise proposed by the authorities, it concludes that they cannot be said to have been denied the opportunity of forming an association.(43)

[15] The ruling of the Court in the *Gorzelik* case does not appear to contradict the line it takes in the other judgments, but highlights its limitation. One of the reasons the Court could decide the way it did in this case, was that the applicants themselves claimed that they did not seek to benefit from the special rights granted by the law to minorities. (44) But if, on the contrary, they had been complaining of being denied the status of minority and the special rights attached to it, it would have been difficult to decide the case without taking a position on the nature of the group's identity. This last observation, however, does not undermine the value of the general approach adopted by European the Court in this set of cases. By ensuring the conditions allowing a free discussion and contestation of cultural identities, by guaranteeing that related issues are not excluded from the democratic debate, it preserves the fluid and ambiguous nature of cultural identities. While it will not always be possible to stick to this approach, it seems preferable for the Court, when the facts of the case permits it, to leave the question of identity open.

(1) « From Pilgrim to Tourist – or a Short History of Identity » in S. Hall and P. du Gay (eds), *QUESTIONS OF CULTURAL IDENTITY*, London, Sage, 1996, 18-36, 18.

(2) ECHR, *Sidiropoulos and others v. Greece*, Judgment of 10 July 1998, available at: <<http://hudoc.echr.coe.int>>.

(3) ECHR, *Gorzelik and others v. Poland*, Judgment of 20 December 2001, available at: <<http://hudoc.echr.coe.int>>.

(4) ECHR, *Ahmet Sadik v. Greece*, Judgment of 15 November 1996, available at: <<http://hudoc.echr.coe.int>>.

(5) ECHR, *Unified Communist Party of Turkey (TBKP) and others v. Turkey*, Judgment of 30 January 1998; *Socialist party of Turkey and others v. Turkey*, Judgment of 25 May 1998; *Party of Freedom and Democracy (Özdep) v. Turkey*, Judgment of 8 December 1999, all available at: <<http://hudoc.echr.coe.int>>.

(6) ECHR, *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Judgment of 2 October 2001, available at: <<http://hudoc.echr.coe.int>>.

(7) On the issue of law and cultural identity, see in particular E. Mertz, "A New Social Constructionism for Sociological Studies", *LAW & SOCIETY REVIEW*, vol. 28, nr. 5, 1994, 1243-1265; W. Espeland, "Legally Mediated Identity: The National Environmental Policy Act and the Bureaucratic Construction of Interests", *id.*, 1149-1179; S. S. Gooding, "Place, Race, and Names: Layered Identities in *United States v. Oregon, Confederated Tribes of the Colville Reservation, Plaintiff-Intervenor*", *id.*, 1181-1229; D. Danielsen and K. Engle (eds), *AFTER IDENTITY, A READER IN LAW AND CULTURE*, Routledge, New York/London, 1995; B. Oomen and S. Tempelman, "The Power of Definition", *SIM SPECIAL*, nr.25, 1999, 7-25.

(8) C. Calhoun, "Social Theory and the Politics of Identity", in C. Calhoun (ed.), SOCIAL THEORY AND THE POLITICS OF IDENTITY, Oxford, Blackwell (1994), 9-36, 13.

(9) On the social constructionist approach to identity, see in particular K. A. Cerulo, "Identity Construction: New Issues, New Directions", ANN. REV. SOCIOL., nr. 23, 1997, 385-409, esp. 387-391; C. Calhoun, *op. cit.*, note 7; S. Hall, "The Question of Cultural Identity", in S. Hall, D. Held and T. McGrew (eds), MODERNITY AND ITS FUTURES: UNDERSTANDING MODERN SOCIETIES, Polity Press, Cambridge, 1992, 273-316; A. J. Norval, "Thinking Identities: Against a Theory of Ethnicity", in E. N. Wilmsen and P. McAllister, THE POLITICS OF DIFFERENCE – ETHNIC PREMISES IN A WORLD OF POWER, University of Chicago Press, Chicago/London (1996), 59-70.

(10) S. Hall, "Cultural Identity and Diaspora", in J. Rutherford (ed.), IDENTITY – COMMUNITY, CULTURE, DIFFERENCE, Lawrence and Wishart, London, 1990, 222-237, 222.

(11) See *supra* note 2. <<http://hudoc.echr.coe.int>>.

(12) See *supra* note 6. <<http://hudoc.echr.coe.int>>.

(13) *Sidiropoulos and others v. Greece*, Judgment, para. 11, *supra* note 2. <<http://hudoc.echr.coe.int>>.

(14) *Sidiropoulos and others v. Greece*, Opinion of the Commission, para. 42, *supra* note 2.

(15) *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Judgment, para. 42, *supra* note 6. <<http://hudoc.echr.coe.int>>.

(16) *Id.*, para. 66-67. <<http://hudoc.echr.coe.int>>.

(17) E. Gellner, NATIONALISM, London, Phoenix, 1997, p. 45. Among the major studies on nationalism, see B. Anderson, IMAGINED COMMUNITIES. REFLECTION ON THE ORIGIN AND SPREAD OF NATIONALISM, London/New York, Verso, 1996; E. J. Hobsbawm, NATIONS AND NATIONALISM SINCE 1780, PROGRAMME MYTH AND REALITY, Cambridge, Cambridge University Press, 1990; and A. D. Smith, THE ETHNIC ORIGINS OF NATIONS, Oxford/New York, Blackwell, 1987.

(18) See *supra*, note 5. <<http://hudoc.echr.coe.int>>.

(19) *Unified Communist Party of Turkey (TBKP) and others v. Turkey*, Judgment, para. 21, *supra* note 5. <<http://hudoc.echr.coe.int>>.

(20) *Id.*, para. 10, emphasis added. <<http://hudoc.echr.coe.int>>.

(21) *Id.*, para. 21. <<http://hudoc.echr.coe.int>>.

(22) See C. Pierse, « Violation of Cultural Rights of Kurds in Turkey », NETHERLANDS QUARTERLY OF HUMAN RIGHTS, vol. 15/3, 1997, 325-341.

(23) *Gorzelik and others v. Poland*, see *supra* note 3. <<http://hudoc.echr.coe.int>>.

(24) *Gorzelik and others v. Poland*, Judgment, para. 12, <<http://hudoc.echr.coe.int>>.

(25) On the case Silesia, see M. Ciechocinska et W. Dressler, « Pologne : le dialogue des cultures réinventé avec ses marges - Biélorussie polonaise et Haute Silésie », W. Dressler (dir.), LE SECOND PRINTEMPS DES NATIONS – SUR LES RUINES D'UN EMPIRES, QUESTIONS NATIONALES ET MINORITAIRES EN POLOGNE, ESTONIE, MOLDAVIE, KAZAKHSTAN, Bruxelles, Bruylant, 1999, 99-153. On the case of the Kurds, see M. Van Bruinessen, « Nationalisme kurde et ethnicités intra-kurdes », in PEUPLES MÉDITERRANÉENS, nr.68-69, July-December 1994, 11-37. See also D. Ergil, « The Kurdish Question in Turkey », JOURNAL OF DEMOCRACY, vol. 11, nr.3, July 2000, 122-135 <http://muse.jhu.edu/journals/journal_of_democracy>. On Macedonia, see H. Poulton, WHO ARE THE MACEDONIANS?, London, Hurst & Company, 2000 (2d ed.); V. Roudometof, « Culture, Identity, and the Macedonian Question: An Introduction », in V. Roudometof (ed.), THE MACEDONIAN QUESTION:

CULTURE, HISTORIOGRAPHY, POLITICS, East European Monographs, Boulder, distributed by Columbia University Press, 2000, 1-24; and Human Rights Watch Report, DENYING ETHNIC IDENTITY: THE MACEDONIANS OF GREECE, April 1994.

(26) J. K. Cowan, "Ambiguities of an emancipatory discourse: the making of a Macedonian minority in Greece", in J.K. Cowan, M.-B. Dembour, R. A. Wilson (eds), CULTURE AND RIGHTS – ANTHROPOLOGICAL PERSPECTIVE, Cambridge, Cambridge University Press, 2001, 152-176.

(27) B. Stoyanova-Boneva, S. E. Nikolov, V. Roudometof, « In Search of 'Bigfoot': Competing Identities in Pirin Macedonia, Bulgaria », in V. Roudometof (ed.), *op. cit.* , note 25, 237-258.

(28) J. K. Cowan, *op. cit.* , 157. In the same vein, B. Stoyanova-Boneva, S. E. Nikolov, V. Roudometof note about the inhabitants of the Bulgarian Macedonia that "numerous competing pressures have led to a situation whereby members of a single family might come to consider themselves as of different ethnic backgrounds." (*op. cit.* , 241).

(29) J. K. Cowan, *op. cit.* , 161.

(30) *Ibid.* She points out that "although a significant number of individuals do now identify themselves as members of a Macedonian minority, many other object to this designation." (*id.* , 167).

(31) In the *Gorzelik* case, the Court asserts: "it is not its task to express an opinion on whether or not the Silesians are a "national minority", let alone to formulate a definition of that concept". *Gorzelik and others v. Poland*, Judgment, para. 55, supra note 3. <<http://hudoc.echr.coe.int>>.

(32) See *supra* note 4. <<http://hudoc.echr.coe.int>>.

(33) See *supra* note 3. <<http://hudoc.echr.coe.int>>.

(34) *Sidiropoulos and others v. Greece*, see *supra* note 2; *Unified Communist Party of Turkey (TBKP) and others v. Turkey*; *Socialist party of Turkey and others v. Turkey*; *Party of Freedom and Democracy (Özdep) v. Turkey*, see *supra* note 5; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, see *supra* note 6. In all these cases, the state is condemned for breach of article 11 of the Convention, which guarantees the right to freedom of peaceful assembly and to freedom of association. <<http://hudoc.echr.coe.int>>.

(35) *Sidiropoulos and others v. Greece*, Judgment, para. 44, see *supra* note 2, emphasis added. <<http://hudoc.echr.coe.int>>.

(36) See *supra* note 6. <<http://hudoc.echr.coe.int>>.

(37) *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Judgment, para. 102, supra note 6. <<http://hudoc.echr.coe.int>>. See also the para. 84 of the Judgment, in which the Court confirms the principles laid down in the *Sidiropoulos* Judgment.

(38) *Unified Communist Party of Turkey (TBKP) and others v. Turkey*, para. 57. <<http://hudoc.echr.coe.int>>.

(39) *Socialist party of Turkey and others v. Turkey*, Judgment, para. 43. See also *Party of Freedom and Democracy (Özdep) v. Turkey*, Judgment, para. 44. See *supra* note 5, <<http://hudoc.echr.coe.int>>.

(40) *Ahmet Sadik v. Greece*, Judgment, note 4. <<http://hudoc.echr.coe.int>>. Note that the Commission concludes unanimously that there has been a breach of the applicant's freedom of speech. Opinion of the Commission, para. 55.

(41) *Gorzelik and others v. Poland*, Judgment, para. 21, see *supra* note 3. <<http://hudoc.echr.coe.int>>

(42) *Id.* , para. 57. <<http://hudoc.echr.coe.int>>

(43) *Id.* , para. 57. <<http://hudoc.echr.coe.int>>.

(44) *Id.* , para. 35. <<http://hudoc.echr.coe.int>>.

