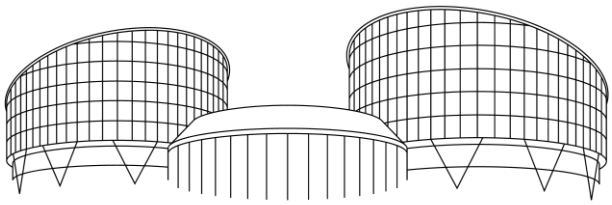

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SİNAN IŞIK v. TURKEY

(Application no. 21924/05)

JUDGMENT

STRASBOURG

2 February 2010

FINAL

02/05/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sinan Işık v. Turkey**,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Vladimiro Zagrebelsky,
Danutė Jočienė,
Dragoljub Popović,
András Sajó,
Işıl Karakaş, *judges,*
and Sally Dollé, *Section Registrar,*

Having deliberated in private on 15 December 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 21924/05) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Sinan Işık ("the applicant"), on 3 June 2005.

2. The applicant was represented by Mr K. Genç, a lawyer practising in Ankara. The Turkish Government ("the Government") were represented by their Agent

3. The applicant alleged, in particular, that the denial of his request to have the word "Islam" on his identity card replaced by the name of his faith "Alevi" violated Article 9 of the Convention. He also alleged a violation of Articles 6 and 14 of the Convention.

4. On 15 January 2008 the President of the Second Section decided to communicate the application to the Government. It was decided that the Chamber would rule on the admissibility and the merits of the application at the same time (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Işık was born in 1962 and lives in İzmir. He is a member of the Alevi religious community, which is deeply rooted in Turkish society and history. Their faith, which is influenced, in particular, by Sufism and certain

pre-Islamic beliefs, is regarded by some Alevi scholars as a separate religion and by others as the "essence" or "original form" of Islam. Its religious practices differ from those of the Sunni[1] schools of law in certain aspects such as prayer, fasting and pilgrimage (see *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, § 8, 9 October 2007).

6. The applicant stated that his identity card, issued by the registrar of births, marriages and deaths, contained a "religion" box which indicated "Islam", even though he was not a follower of that religion.

7. On 7 May 2004 he applied to the İzmir District Court seeking to have his identity card feature the word "Alevi" rather than the word "Islam". The relevant parts of his application read as follows:

> "... the word 'Islam' featuring on my identity card does not reflect the true situation. As an Alevi citizen of the Republic of Turkey, I thought, on the basis of my knowledge and beliefs, that a person could not be at once 'Alevi' and 'Islam' (sic!). As a citizen of the secular Republic of Turkey, which, under its Constitution, protects freedom of religion and conscience, I refuse to continue to bear the weight of this injustice and this contradiction stemming from the desire to offset a fear, which is wholly unfounded and deeply offensive."

8. On 9 July 2004, following a request by that court, the legal adviser to the Directorate of Religious Affairs issued his opinion on the applicant's request. He considered in particular that to indicate religious interpretations or subcultures in the religion box on identity cards was incompatible with national unity, republican principles and the principle of secularism. He argued in particular that the word "Alevi", designating a sub-group within Islam, could not be considered to be a separate religion or a branch ("*mezhep*") of Islam. It was an interpretation of Islam influenced by Sufism and having specific cultural features.

9. On 7 September 2004 the court dismissed the applicant's request on the basis of the following considerations:

> "1. ... the religion box on identity cards contains general information about citizens' religion. It is accordingly appropriate to examine whether the Alevi faith (*Alevilik*) constitutes a separate religion or an interpretation of Islam. It is clear from the opinion issued by the Presidency of the Directorate of Religious Affairs that the Alevi faith is an interpretation of Islam which is influenced by Sufism and which has specific cultural features ... Accordingly, that faith constitutes an interpretation of Islam and not a religion as such, in accordance with the general principles laid down in this regard. Furthermore, only religions in general are indicated on identity cards and not an interpretation or branch of any particular religion. No error has therefore been made in indicating 'Islam' on the identity card of the applicant, who claims to be 'Alevi'.

1. The majority of Turkey's population follows the Hanafite theological school's moderate interpretation of Islam.

2. Books and articles submitted by the applicant reveal that Ali[1] is described as the 'lion of Allah' or similar. The fact that certain poems contain different expressions does not mean that the Alevi faith is not part of Islam. Since Ali is one of the four caliphs of Islam and the son-in-law of Muhammad, he must be considered to be one of Islam's eminent personalities ...

3. For example, in Christianity too, there are sub-groups such as Catholics and Protestants, which nonetheless have their basis in Christianity. That is to say that when someone adheres to a particular interpretation of Islam, it does not mean that that interpretation is not part of Islam ..."

10. On an unspecified date the applicant appealed to the Court of Cassation. He complained that he had been obliged to disclose his beliefs because it was mandatory to indicate his religion on his identity card, without his consent and in breach of the right to freedom of religion and conscience within the meaning of Article 9 § 1 of the Convention. He further alleged that the indication at issue, deriving from section 43 of the Civil Registration Act (Law no. 1587), could not be considered to be compatible with Article 24 § 3 of the Constitution, which provided that "no one shall be compelled ... to disclose his or her religious beliefs and convictions". He also stated that he had lodged two applications, the first to have the word "Islam" describing his religion on his identity card deleted, and the second, to have the word "Alevi" inserted into the relevant box. He stated that the court of first instance had been able to examine the two requests separately, allowing the first and rejecting the second, finding that the indication at issue was not compatible with Article 24 § 3 of the Constitution. Lastly, he challenged the proceedings rejecting his application, in which the Directorate of Religious Affairs had described his faith as an interpretation of Islam.

11. On 21 December 2004 the Court of Cassation upheld the judgment of the court below without giving any other reasoning.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Domestic law

1. Constitution

12. Article 10 of the Turkish Constitution provides as follows:

"All individuals shall be equal before the law without any distinction based on language, race, colour, sex, political opinion, philosophical belief, religion, membership of a religious sect or other similar grounds."

...

1. Ali was the fourth Caliph of Islam. He is considered by Alevis to be the first Imam and plays a central role in that faith.

State bodies and administrative authorities shall act in compliance with the principle of equality before the law in all circumstances."

13. The relevant parts of Article 24 read as follows:

"Everyone shall have the right to freedom of conscience, belief and religious conviction.

...

No one shall be compelled to participate in prayers, worship or religious services or to reveal his or her religious beliefs and convictions; no one shall be censured or prosecuted for his or her religious beliefs or convictions. ..."

14. Article 136 provides:

"The Directorate of Religious Affairs, which is part of the general administration, shall perform the duties entrusted to it by virtue of the specific law which governs it, in accordance with the principle of secularism, and shall be removed from all political views or ideas, with a view to national solidarity and integrity."

2. Civil Registration Act (Law no. 1587)

15. The relevant passages of section 43 of the Civil Registration Act (*Nüfus Kanunu*), as in force at the material time, read as follows:

"The civil registers shall contain the following information concerning individuals and families ...

(a) Information concerning civil status:

(1) Forename and surname, gender, forenames and surnames of parents, maiden name;

(2) Place and date of birth and date of registration (year, month and day);

(3) Corrections ...

(b) Other information

...

(2) Religion;

..."

3. Case-law of the Constitutional Court

16. By a judgment of 21 June 1995, published in the Official Gazette on 14 October 1995, the Constitutional Court declared section 43 of the Civil Registration Act to be in conformity with Article 2 (secularism) and Article 24 (freedom of religion) of the Constitution. The judges of the Constitutional Court held, in particular:

"The State must be aware of the characteristics of its citizens. That information is required for the purposes of public policy, the general interest, and economic, political and social imperatives ...

The secular State must remain neutral in terms of religion. Accordingly, the indication of religion on identity cards must not engender inequality among citizens ...

In a secular State, all religions rank equally. No one may interfere in the beliefs or lack of beliefs of another. Furthermore, the rule at issue applies to all beliefs and cannot therefore give rise to discrimination ...

The rule that 'No one shall be compelled ... to reveal his or her religious beliefs and convictions' cannot be interpreted as a prohibition on indicating that person's religion in official registers. The Constitution forbids compulsion.

Compulsion concerns the disclosure of religious beliefs and convictions. The notion of 'religious beliefs and convictions' is not limited by the provision of information concerning each individual's religion in the State's civil registers for demographical purposes. That notion is wide-ranging and covers many factors relating to religion and belief.

The rule that 'No one shall be compelled ... to reveal his or her religious beliefs and convictions' must be read in conjunction with the rule that 'no one shall be censured or prosecuted for his or her religious beliefs or convictions'. In no circumstances does this amount to compulsion, censure or prosecution.

Furthermore, under Article 266 of the Civil Code, 'a person of legal age shall be free to choose his or her religion'. Consequently, anyone wishing to change his or her religion as indicated in the civil register may submit a request to that effect to the registration authorities. The amendment will be made on the instruction of the decentralised authority. Likewise, anyone wishing to have that information deleted or to record another belief which cannot be accepted as a religion may apply to the civil courts ...

To conclude, Article 43 of the Civil Code cannot be considered to entail compulsion. It relates to information concerning a person's religion which is provided to the civil registry for the purposes of public policy, general interest and social need ..."

Five of the eleven Constitutional Court judges did not share the majority opinion, finding that the indication of religion in the State's civil registers and on identity cards was incompatible with Article 24 of the Constitution. One of the judges in the minority considered in particular that:

"Under the Civil Registration Act, the parents or legal representatives of children are obliged to declare the religion of their children, failing which no entry will be made. The inclusion of religion in the family record and on identity cards, before the child reaches the age of majority and without his or her consent, constitutes *de facto* mandatory disclosure of religion in daily life ... That disclosure obligation, stemming from the indication of religion on a document confirming civil status, and the presentation of that document when registering at a school or when carrying out military service formalities, does indeed amount, in my view, to 'compulsion'."

4. Civil Registry Services Act (Law no. 5490) and the implementing provisions thereof

17. The relevant passages of sections 7 and 35 of the Civil Registry Services Act (*Nüfus Hizmetleri Kanunu*), which came into force on 29 April 2006 (repealing the aforementioned Civil Registration Act), read as follows:

Section 7
Personal information required in civil registers

"1. A civil register is established for each district or village. The civil registers shall contain the following information:

...

(e) Religion.

..."

Section 35
Correction of data

"1. No entry in the civil registers may be corrected without a final judicial decision ...

2. Information relating to a person's religion shall be entered or amended in accordance with the written statements of the person concerned; the box for this purpose may be left blank or the information may be deleted."

18. The relevant parts of section 82 of the implementing provisions of the Civil Registry Services Act, adopted on 29 September 2006, read as follows:

Section 82
Requests concerning information on religion

"Any information concerning an individual's religion shall be entered, amended, deleted or omitted in accordance with that individual's written statements. Requests for amendment or deletion of data relating to religion shall be subject to no restrictions whatsoever."

5. The Directorate of Religious Affairs

19. The Directorate of Religious Affairs was created by Law no. 633 of 22 June 1965 on the Creation and Functions of the Presidency of Religious Affairs, published in the Official Gazette of 2 July 1965. Section 1 thereof provides that the Presidency of Religious Affairs, reporting to the Prime Minister, is responsible for dealing with matters of belief, worship and moral principles of Islam and administering places of worship. Within the Directorate, the Supreme Council of Religious Affairs constitutes the supreme decision-making and consultative authority. It is made up of sixteen members appointed by the Directorate president. It is competent to answer questions concerning religion (section 5 of Law no. 633).

B. Guidelines for the review of legislation pertaining to religion or belief, adopted by the Venice Commission

20. The relevant parts of the document entitled "Guidelines for the review of legislation pertaining to religion or belief" adopted by the Venice

Commission at its 59th plenary session (Venice, 18 and 19 June 2004), read as follows:

> "II. Substantive issues that typically arise in legislation
>
> ...
>
> 2. The definition of 'religion'. Legislation often includes the understandable attempt to define religion or related terms ('sects', 'cults', 'traditional religions' etc.). There is no generally accepted definition for such terms in international law, and many States have had difficulty in defining these terms. It has been argued that such terms cannot be defined in a legal sense because of the inherent ambiguity of the concept of religion. A common definitional mistake is to require that a belief in God be necessary for something to be considered a religion. The most obvious counter-examples are classical Buddhism, which is not theistic, and Hinduism, which is polytheistic ...
>
> 3. Religion or belief. International standards do not speak of religion in an isolated sense, but of 'religion' *or* 'belief'. The 'belief' aspect typically pertains to deeply held conscientious beliefs that are fundamental about the human condition and the world. Thus, atheism and agnosticism, for example, are generally held to be entitled to the same protection as religious beliefs. It is very common for legislation not to protect adequately (or to not refer at *all* to) rights of non-believers. ...
>
> B. Basic values underlying international standards for freedom of religion or belief
>
> Broad consensus has emerged within the OSCE region on the contours of the right of freedom of religion or belief as formulated in the applicable international human rights instruments. Fundamental points that should be borne in mind in addressing legislation in this area include the following major issues:
>
> 1. Internal freedom (*forum internum*). The key international instruments confirm that '[e]veryone has the right to freedom of thought, conscience and religion'. In contrast to manifestations of religion, the right to freedom of thought, conscience and religion within the *forum internum* is absolute and may not be subjected to limitations of any kind. Thus, for example, legal requirements mandating involuntary disclosure of religious beliefs are impermissible ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

21. The applicant alleged a violation of Article 9 of the Convention, which reads as follows:

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

22. The applicant complained that he had been obliged, without his consent and in breach of the right to freedom of religion and conscience, to disclose his belief because it was mandatory to indicate his religion on his identity card. He submitted that the indication at issue could not be considered to be compatible with Article 24 § 3 of the Constitution, which provided that "no one shall be compelled to reveal his or her religious beliefs and convictions". He pointed out that that public document had to be shown at the request of any public authority, private enterprise or in the context of any formality whatsoever.

He also stated that he had asked to have the word "Islam" replaced on his identity card by the indication of his faith as "Alevi", arguing that the existing indication was incorrect. He challenged the proceedings rejecting his application, in which the Directorate of Religious Affairs had described his faith as an interpretation of Islam.

A. Admissibility

1. Failure to exhaust domestic remedies

23. The Government stated that the applicant, who had merely asked the judicial authorities to replace the word "Islam" on his identity card with the indication of his belief as "Alevi", had not duly exhausted domestic remedies in relation to his complaint concerning freedom of religion and conscience. In the Government's view, the applicant had never argued that the indication of his religion on his identity card was incompatible with his freedom of religion and conscience.

24. The applicant did not submit observations in response on that point within the time allowed.

25. The Court reiterates that the rule of exhaustion of domestic remedies laid down in Article 35 § 1 of the Convention requires applicants – using the legal remedies available in domestic law in so far as they are effective and adequate – to afford the respondent State the possibility of putting right the violations alleged against them before those allegations are submitted to the Court (see, among other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

26. In the instant case, the Court observes that in his application to the domestic courts, stressing his profound disagreement with the obligation imposed on him to have an identity card indicating his religion as "Islam", the applicant clearly challenged the indication at issue, relying on the constitutional protection of freedom of religion and conscience and his citizenship of a secular State (see paragraph 7 above).

27. The Court notes that at the material time it was mandatory in Turkey to indicate one's religion on identity cards and that this had been held by the Constitutional Court in its judgment of 21 June 1995 to be in conformity

with Article 24 § 3 of the Constitution, notwithstanding the indication in that same constitutional provision that "no one shall be compelled ... to reveal his or her religious beliefs and convictions".

28. Accordingly, having regard to the legal context at the material time as described above, the Court has no doubt that, in requesting that the indication "Islam" be replaced on his identity card by an indication of his "Alevi" faith, the applicant was seeking to benefit from the constitutional protection of freedom of religion and conscience guaranteed by Article 24 § 3 of the Turkish Constitution, particularly since before the Court of Cassation, he had clearly challenged the mandatory indication of religion, by requesting, in the alternative, that it be deleted from his identity card (see paragraph 10 above).

29. Consequently, the Court considers that, in his submissions to the Turkish courts, the applicant clearly referred to his complaints under Article 9 of the Convention. The Government's preliminary objection of failure to exhaust domestic remedies must therefore be rejected.

2. Victim status

30. The Government submitted that the applicant could not claim to be the victim of a violation of his right to freedom to manifest his religion. They argued that the denial of the applicant's request did not impair the essence of his right to manifest his religion, because the indication of religion on the identity card could not be interpreted as a measure compelling all Turkish citizens to disclose their religious beliefs and convictions and as a restriction on the freedom to manifest their religion in worship, teaching, practice and observance. Furthermore, referring to the case-law of the Turkish courts (see paragraph 16 above), the Government argued that anyone wishing to delete the relevant information in its entirety could apply to the civil courts.

31. The Court considers that the Government's argument based on the applicant's lack of victim status raises issues closely connected with the substance of the complaint under Article 9 of the Convention. The Court therefore joins it to the merits (see, *mutatis mutandis*, *Airey v. Ireland*, 9 October 1979, § 19, Series A no. 32).

3. Other grounds for inadmissibility

32. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Compliance with Article 9 of the Convention

1. The parties' arguments

33. The Government submitted that there had been no interference in the exercise by the applicant of his right to freedom of religion, because no direct connection could be made between the indication of religion on identity cards and freedom of religion and conscience. It could not be construed as a requirement to disclose one's religious beliefs or as a restriction on the freedom to manifest one's religion in worship, teaching, practice and observance.

34. Referring to the Turkish Constitutional Court's judgment of 21 June 1995 (see paragraph 16 above), the Government further submitted that the indication of religion on identity cards did not affect the substance of the right to freedom of religion and belief; it was required for the purposes of public policy, the general interest and social imperatives. It in no way constituted a measure aimed at compelling any individual to disclose his or her beliefs or at censuring or prosecuting anyone for his or her religious beliefs. The Republic of Turkey was a secular State in which freedom of religion was specifically enshrined in the Constitution. The measure complained of could not therefore be deemed to be a restriction on the applicant's freedom of religion.

35. Furthermore, in the Government's view, the content of the identity card could not be determined on the basis of the wishes of each individual. Having regard to the multitude of faiths within Islam (for example, "Hanafi" or "Shafi") or mystical orders (such as "Mevlevi", "Qadiri" or "Naqshbandi"), the various denominations or branches of the same religion had not to be indicated so as to preserve public order and the neutrality of the State. As regards the role of the Directorate of Religious Affairs, the Government submitted that, in accordance with the relevant legislation, that directorate was responsible for giving advice on matters relating to the Muslim religion. It operated in conformity with the principle of secularism and was responsible for taking into consideration the fundamental bases of the Muslim religion which were valid for all Muslims. Furthermore, referring to Article 10 of the Constitution (see paragraph 12 above), they pointed out that the State was bound to ensure that the various sects and interpretations within the same religion were treated equally.

36. The applicant, who did not file his observations within the time allowed, submitted in his application form that the denial of his request to have the indication "Islam" on his identity card replaced by the indication of his faith as "Alevi", amounted to an interference with his right to freedom to practise his religion. He also complained that he was obliged to disclose his belief because that indication was mandatory on identity cards.

2. The Court's assessment

37. The Court reiterates that as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion. (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A, and *Buscarini and Others v. San Marino* [GC], no. 24645, § 34, ECHR 1999-I).

38. While religious freedom is primarily a matter of individual conscience, it also implies freedom to manifest one's religion alone and in private or in community with others, in public and within the circle of those whose faith one shares. Furthermore, the Court has had occasion to point out that Article 9 enshrines negative rights, for example freedom not to hold religious beliefs and not to practise a religion (see, to this effect, *Kokkinakis*, and *Buscarini and Others*, cited above).

39. The Court notes that the applicant, who stated that he was a member of the Alevi religious community, had to carry an identity card on which his religion was indicated as Islam. On 7 May 2004 the applicant applied to the İzmir District Court to have his faith entered into the religion box (see paragraph 7 above). Furthermore, he challenged the mandatory indication of religion in the Court of Cassation, by asking in the alternative that it be deleted from his identity card, relying on his right not to be compelled to disclose his beliefs (see paragraph 10 above). However, on the basis of an opinion issued by the Directorate of Religious Affairs, the District Court rejected his requests on the ground that "only religions in general are indicated on identity cards and not an interpretation or branch of a particular religion". As far as the national court was concerned, "the Alevi faith is an interpretation of Islam which is influenced by Sufism and which has specific cultural features" (see paragraph 9 above).

40. The Court observes that, in accordance with the domestic legislation applicable at the material time, the applicant, like all Turkish citizens, was obliged to carry an identity card indicating his religion. That public document had to be shown at the request of any public authority or private enterprise or in the context of any formality whatsoever requiring identification of the holder.

41. In this connection, the Court considers it necessary to reiterate that in the case of *Sofianopoulos and Others v. Greece* ((dec.), nos. 1977/02, 1988/02 and 1997/02, ECHR 2002-X), it found that an identity card could not be regarded as a means intended to ensure that the adherents of any

religion or faith whatsoever should have the right to exercise or manifest their religion. However, it considers that the right to manifest one's religion or beliefs also has a negative aspect, namely an individual's right not to be obliged to disclose his or her religion or beliefs and not to be obliged to act in such a way that it is possible to conclude that he or she holds – or does not hold – such beliefs. Consequently, State authorities are not entitled to intervene in the sphere of an individual's freedom of conscience and to seek to discover his or her religious beliefs or oblige him or her to disclose such beliefs (see *Alexandridis v. Greece*, no. 19516/06, § 38, 21 February 2008).

The Court will examine this case from the angle of the negative aspect of freedom of religion and conscience, namely the right of an individual not to be obliged to manifest his or her beliefs.

42. The Court does not find persuasive the Government's argument that the indication at issue could not be interpreted as a measure compelling all Turkish citizens to disclose their religious convictions and beliefs. What is at stake is the right not to disclose one's religion or beliefs, which falls within the *forum internum* of each individual. This right is inherent in the notion of freedom of religion and conscience. To construe Article 9 as permitting every kind of compulsion with a view to the disclosure of religion or belief would strike at the very substance of the freedom it is designed to guarantee (see, *mutatis mutandis, Young, James and Webster v. the United Kingdom*, 13 August 1981, § 52, Series A no. 44; see also the dissenting opinion of one of the Constitutional Court judges, paragraph 16 above).

43. Furthermore, given the frequent use of the identity card (school registration, identity checks, military service and so on), the indication of religious beliefs in official documents such as identity cards exposes the bearers to the risk of discriminatory situations in their relations with the administrative authorities (see *Sofianopoulos and Others*, cited above).

44. Moreover, the Court cannot see why it would be necessary to indicate religion in civil registers or on identity cards for demographic purposes, which would necessarily involve legislation making it mandatory to declare one's religious beliefs.

45. The Court also notes that the applicant challenged the procedure rejecting his application, in the course of which the Directorate of Religious Affairs had described his faith as an interpretation of Islam (see paragraph 22 above). In that regard, the Court notes that it has always stressed that, in a democratic society where the State is the ultimate guarantor of pluralism, including religious pluralism, the role of the authorities is not to adopt measures favouring one interpretation of religion over another aimed at forcing a divided community, or part of it, to come together under a single leadership against its own wishes (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX). The State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess

the legitimacy of religious beliefs, and requires the State to ensure that conflicting groups tolerate each other, even where they originated in the same group (see, *mutatis mutandis*, *Manoussakis and Others v. Greece*, 26 September 1996, § 47, *Reports of Judgments and Decisions* 1996-IV, see also *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 123, ECHR 2001-XII).

46. The Court therefore considers that the assessment of the applicant's religion by the domestic authorities, on the basis of an opinion issued by an authority responsible for Islamic religious affairs, is in breach of the State's duty of neutrality and impartiality.

47. The Government drew the Court's attention to the fact that since the legislative amendment resulting from the Civil Registry Services Act, the applicant had been entitled to request that the religion box be left blank (see paragraphs 17-18 above).

48. The Court observes that under the Civil Registry Services Act of 29 April 2006, civil registers continue to hold information on the religion of individuals (section 7 of that Act). However, under section 35(2), "information relating to a person's religion shall be entered or amended in accordance with the written statements of the person concerned; the box for this purpose may be left blank or the information may be deleted."

49. In the Court's view, that amendment does not affect the considerations expressed above because identity cards still contain a religion box – whether or not it is left blank. Furthermore, anyone wishing to amend the information concerning his or her religion as indicated on the identity card or refusing to indicate his or her religion on the card has to submit a written statement. Although the relevant legislation and regulations are silent as to the content of that statement, the Court observes that the mere fact of having to apply for religion to be deleted from civil registers could constitute disclosure of information concerning an aspect of the individual's attitude to religion (see, among other authorities, *Folgerø and Others v. Norway* [GC], no. 15472//02, § 98, ECHR 2007-III, and *Hasan and Eylem Zengin*, cited above, § 73).

50. That also holds true for the applicant. He must inform the authorities of his faith in order to have that information recorded on his identity card. Since the card is obtained in this way and is frequently used in everyday life, it constitutes *de facto* a document requiring the applicant to disclose his religious beliefs against his will every time he uses it.

51. In any event, when identity cards have a religion box, leaving that box blank inevitably has a specific connotation. Bearers of identity cards which do not contain information concerning religion would stand out, against their will and as a result of interference by the authorities, from those who have an identity card indicating their religious beliefs. Furthermore, the fact of asking for no information to be shown on identity cards is closely linked to the individual's most deeply held beliefs.

Accordingly, the Court considers that the issue of disclosure of one of an individual's most intimate aspects still arises.

52. That situation is undoubtedly at odds with the principle of freedom not to manifest one's religion or belief. That having been said, the Court observes that the breach in question arises not from the refusal to indicate the applicant's faith (Alevi) on his identity card but from the problem of the indication – whether obligatory or optional – of religion on the identity card. It concludes therefore that the applicant may still claim to be the victim of a violation, notwithstanding the legislative amendment passed on 29 April 2006, and dismisses the Government's objection (see paragraph 31 above).

53. There has therefore been a violation of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLES 6 AND 14 OF THE CONVENTION

54. The applicant also complained of a violation of Article 6 of the Convention on the ground that the District Court had sought only the opinion of the Directorate of Religious Affairs, a public institution. In his view, that institution was not qualified to provide an opinion on Alevis since it was not specialised in the Alevi faith and had no interest in it. He added that had the court sought the opinion of the Federation of Alevi-Bektashi Associations (a private federation of Alevi associations), its interpretation would have been different from that of the Directorate of Religious Affairs. The court should have sought the opinion of that federation or of religious-affairs specialists. The applicant argued that the domestic courts had therefore conducted an inadequate investigation, rendering the proceedings unfair.

55. Lastly, the applicant stated that his request had been denied by the domestic courts because he was a member of the Alevi religious community. The District Court had merely sought the opinion of a public institution which denied the very existence of Alevis and had not sought the opinion of the aforementioned federation. In the applicant's view, that amounted to discrimination and hence, a violation of Article 14 of the Convention.

56. The Government disputed that argument.

57. The Court notes that these complaints are related to those that it has examined above and must therefore also be declared admissible. However, having regard to its finding under Article 9 of the Convention (see paragraph 53 above), the Court considers that there is no need to examine separately whether there has in the instant case been a violation of the other provisions relied upon by the applicant.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

58. Articles 41 and 46 of the Convention provide:

Article 41

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Article 46

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution".

59. The applicant did not submit a claim for just satisfaction within the time-limit set. The Court therefore considers that there is no need to award him any amount under that head.

60. The Court also observes that in the instant case, it has ruled that indicating a citizen's religion in civil registers or on identity cards is incompatible with the freedom not to disclose one's religion (see paragraph 53 above). These conclusions in themselves imply that the violation of the applicant's right, as secured by Article 9 of the Convention, has arisen out of a problem relating to the indication - whether obligatory or optional - of religion on identity cards. In this regard, it considers that the removal of the religion box could constitute an appropriate form of redress to put an end to the breach it has found.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the application admissible;

2. *Joins to the merits*, by six votes to one, the Government's objection concerning the applicant's lack of victim status and *dismisses* it by six votes to one;

3. *Holds*, by six votes to one, that there has been a violation of Article 9 of the Convention;

4. *Holds*, by six votes to one, that there is no need to examine separately whether there has been a violation of Articles 6 and 14 of the Convention in the instant case.

Done in French, and notified in writing on 2 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Sally Dollé	Françoise Tulkens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Judge Cabral Barreto is annexed to this judgment.

F.T.
S.D.

DISSENTING OPINION OF JUDGE CABRAL BARRETO

(Translation)

To my great regret, I am unable to agree with the majority finding of a violation of Article 9 of the Convention for reasons of both form and substance.

1. The Court, in its judgment, examined the application from three angles:

(a) the applicant's request to have "Islam" replaced by "Alevi" to indicate his religion;
(b) or, in the alternative, the request to have the indication of religion, in this case "Islam", deleted from his identity card;
(c) removal of the religion box from the identity card.

2. It would appear to me that as regards the first two points, the applicant no longer has victim status.

In fact, as a result of the reform of 29 September 2006, it is now possible to delete information concerning religion. The religion box on identity cards may be left blank or the information may be deleted.

Moreover, such action will be taken on a simple written request.

I am therefore of the view that the complaints concerning the first two points have been remedied domestically and that, consequently, this part of the application should be struck out of the list.

3. The third aspect – removal of the religion box – raises issues of both form and substance.

3.1. An issue of form – failure to exhaust domestic remedies.

This issue was not raised before the national authorities by the applicant or by any other person.

Before the national courts and even before the Court, the applicant restricted himself to the first two points.

The Court is unaware of any domestic practice that would allow it to ignore this admissibility criterion.

It is true that the Government did not address this point, and according to existing case-law, if the Government do not raise this ground of inadmissibility, the Court cannot then apply it of its own motion once the application has been communicated.

However, in the present case, the Government were not faced with such a problem and cannot therefore be criticised for an omission for which they were not responsible.

Had the Court wanted to examine the application from that perspective, either because it had considered, from the outset, that the application raised

that issue or because in its view, the complaint was bound up with the other specific complaints lodged by the applicant, it should have invited the Government to respond on that point.

However, the Court could not examine that complaint at the judgment stage, given that it had not been raised by the applicant before the national courts or communicated to the Government.

3.2 If, as the majority have done, one were to consider that there was no formal obstacle to examination of the merits of the complaint, I have to say that I cannot subscribe to the approach that "the fact of asking for no information to be shown on identity cards is closely linked to the individual's most deeply held beliefs" and that "the issue of disclosure of one of an individual's most intimate aspects still arises", a situation which "is undoubtedly at odds with the principle of freedom not to manifest one's religion or belief" (see paragraphs 51 and 52 of the judgment).

I must point out firstly that I fully agree with the Court's case-law as reflected in *Folgerø and Others* and *Hasan and Eylem Zengin*, cited at paragraph 49 of the judgment.

At paragraph 98 of *Folgerø and Others*, the Court refers to "an obligation on parents to disclose **detailed information** to the school authorities about their religions and philosophical convictions" and to the fact that "inherent in the condition to give **reasonable grounds** was a risk that the parents might feel compelled to disclose to the school authorities intimate aspects of their own religious and philosophical convictions" (my emphasis).

In *Hasan and Eylem Zengin*, the Court considered that "the fact that parents must make a prior declaration to schools stating that they belong to the Christian or Jewish religion in order for their children to be exempted from the classes in question may also raise a problem under Article 9 of the Convention".

In short, religious beliefs fall within the *forum internum* of each individual and an issue may be raised under Article 9 of the Convention if a person is compelled to disclose them to the authorities.

However, requests to have the indication of religion deleted from identity cards are not subject to any limitation but merely to a written declaration.

In that declaration, the individual is not obliged to disclose his or her religion or to give any information at all about his or her beliefs, but merely to ask that no indication be given in the relevant box.

It would appear to me that the majority are going too far when they say that "the mere fact of having to apply for religion to be deleted from civil registers could constitute disclosure of information concerning an aspect of the individual's attitude to religion".

The majority go beyond the case-law on which they rely, which requires that in order for a violation of Article 9 of the Convention to be found, a person should at least be compelled to disclose his or her religion .

In the instant case, persons requesting deletion of the indication, whether Alevi, Christian, Jewish or atheist, are entitled to hold an identity card that contains no information about their religion or beliefs without the authorities knowing what they believe.

In my view, the majority's interpretation goes beyond the bounds of our case-law and constitutes an excessive approach, scarcely in keeping with the margin of appreciation that should be afforded to the States in this area.

4. That having been said, I must admit, and I would even go so far as to say that I find it regrettable, that I cannot understand why the identity card should indicate a person's religion (even on a voluntary basis) because I cannot see the significance or use of any such information.