

Chapter 12

Some other key rights:
freedom of thought, conscience,
religion, opinion, expression,
association and assembly

Facilitator's Guide

Learning objectives

- To familiarize the participants with key rights of the freedoms of thought, conscience, religion, opinion, expression, association and assembly and their importance in a society respectful of human rights
- To illustrate how these freedoms, as well as the limitations attached to the exercise of most of them, are interpreted by the international monitoring organs
- To explain the role of judges, prosecutors and lawyers in safeguarding the freedoms dealt with in this chapter

Questions I

- How are the following freedoms protected in the country where you work:
 - The freedoms of thought, conscience, and religion;
 - The freedoms of opinion and expression; and
 - The freedoms of association and assembly?
- Are there any particular concerns with regard to the effective implementation of these freedoms in the country in which you work?

Questions II

- Are there any groups in the country where you work that might be particularly vulnerable to violations of one or more of these freedoms?
- If so, who are they and how may their freedoms be violated?
- What judicial or administrative remedies exist in the country where you work for persons who consider themselves to be victims of violations of these freedoms?

Questions III

- How, and to what extent, does the law deal with the specific problems of girls?
- What can you as judges, prosecutors and lawyers do in order to improve the protection of the rights of women in the country where you work?

Questions IV

- With regard to those freedoms whose exercise may be limited: what is the balance to be struck between an individual person's right to exercise these freedoms as compared to the general interest of a society in protecting, for instance, national security, public order, safety, health, morals or the rights and freedoms of others?
- What can you as judges, prosecutors or lawyers do in order to protect every person's right to the freedoms of thought, conscience, religion, opinion, expression, association and assembly?

Relevant legal instruments I

Universal instruments (1)

- The International Covenant on Civil and Political Rights, 1966
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The International Convention on the Elimination of All Forms of Racial Discrimination, 1965
- The Convention on the Elimination of All Forms of Discrimination against Women, 1979
- The Convention on the Rights of the Child, 1989

Relevant legal instruments II

Universal instruments (2)

- The ILO Freedom of Association and Protection of the Right to Organize Convention, 1948
- The ILO Right to Organize and Collective Bargaining Convention, 1949

- The Universal Declaration of Human Rights, 1948
- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 1999
- The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
- The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992

Relevant legal instruments III

Regional instruments (1)

- The African Charter on Human and Peoples' Rights, 1981
- The American Convention on Human Rights, 1969
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994

Relevant legal instruments IV

Regional instruments (2)

- The European Convention on Human Rights, 1950
- The European Social Charter, 1961, and the European Social Charter (revised), 1996

The right to freedom of thought, conscience and religion

Key legal texts I

Article 18 (1) and (2) of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

The right to freedom of thought, conscience and religion

Key legal texts II

Article 18 (3) and (4) of the International Covenant on Civil and Political Rights:

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The right to freedom of thought, conscience and religion

Key legal texts III

Article 8 of the African Charter on Human and Peoples' Rights:

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

The right to freedom of thought, conscience and religion

Key legal texts IV

Article 12 (1) and (2) of the American Convention on Human Rights:

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.
2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

The right to freedom of thought, conscience and religion

Key legal texts V

Article 12 (3) and (4) of the American Convention on Human Rights:

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.
4. Parents or guardians, as the case may be, have the right to provide for the religious or moral education of their children or wards that is in accord with their own convictions.

The right to freedom of thought, conscience and religion

Key legal texts VI

Article 9 of the European Convention on Human Rights:

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.

The right to freedom of thought, conscience and religion

What it means I

The right to freedom of thought, conscience and religion is far-reaching and covers all matters relating to one's personal convictions. It protects religious beliefs, non-religious beliefs, as well the right not to profess any religion or belief. This right is not limited to traditional religions or religions and beliefs with institutional characteristics or practices similar to those of traditional religions.

The right to freedom of thought, conscience and religion

What it means II

The right to freedom of thought, conscience and religion also implies that every person has the unconditional right to have or adopt a religion or belief of his or her choice. This freedom includes the right to change one's religion or beliefs. Every person has the right not to be coerced or otherwise compelled to maintain or change his or her religion or beliefs.

The right to freedom of thought, conscience and religion

What it means III

The right to freedom of thought, conscience and religion, including the freedom to have or adopt a religion or belief of one's choice, is protected unconditionally, although the freedom of conscience does not imply a right to refuse all obligations imposed by law.

No limitations may be imposed on a person's freedom to have or adopt a religion or belief of his or her choice.

The right to freedom of thought, conscience and religion

What it means IV

Under the International Covenant on Civil and Political Rights and the American Convention on Human Rights, the freedom of thought, conscience and religion cannot be derogated from in any circumstances.

The freedom of thought, conscience and religion is a cornerstone of a democratic society and a society respectful of human rights.

The right to manifest one's religion or beliefs

Every person has the right to manifest his or her religion or beliefs either in private or in public and either individually or in community with others.

The manifestation of one's religion or belief encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts, as well as various practices integral to such acts, such as the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also customs such as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group.

Lawful limitations on the right to manifest one's religion or beliefs

The right to manifest one's religion or belief may be subjected to limitations, provided that such limitations are:

- Prescribed by law
- Imposed in order to protect a legitimate aim, namely, public safety, (public) order, health, morals or the rights and freedoms of others
- Necessary in order to protect the legitimate objective (respecting the principle of proportionality)
- Are not discriminatory in purpose or applied in a discriminatory manner

At the European level the notion of *a democratic society* plays a pivotal role in the determination of the question of the necessity of measures limiting a person's right to manifest his or her religion or beliefs.

The freedom of religion and public school instruction I

Under the International Covenant on Civil and Political Rights and the American Convention on Human Rights, parents or legal guardians have the right to ensure that the religious and moral education of their children is conveyed in accordance with their own convictions.

It is, however, compatible with the International Covenant to convey public school instruction in subjects such as the general history of religions and ethics, provided this is done in a neutral and objective manner.

The freedom of religion and public school instruction II

Under the European Convention on Human Rights, the Contracting States are legally bound to ensure that in each and every function that they undertake in the field of education and teaching, the religious or philosophical convictions of parents or legal guardians are respected.

This means that States have to take care to convey information or knowledge in an objective, critical and pluralistic manner and that they are forbidden to pursue an aim of indoctrination.

State religions and religious minorities

The Human Rights Committee has emphasized that, under the International Covenant on Civil and Political Rights, State parties have a legal duty to ensure that there is no discrimination against any religion or belief, including newly established religions or religious minorities that may be the subject of hostility by the predominant religious community.

Conscientious objection to military service I

The Human Rights Committee has determined that a right to conscientious objection to military service can be derived from article 18 of the International Covenant on Civil and Political Rights. Limiting the right to conscientious objection to particular religious groups has been found by the Human Rights Committee to be discriminatory, and this right should be available to every person whose objection to military service is based on genuinely held personal convictions, whether of a religious or non-religious character.

Conscientious objection to military service II

The United Nations Commission on Human Rights has recommended that States with compulsory military service provide conscientious objectors with alternative or substitute service which is compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature.

The Human Rights Committee has determined that any difference in length of service between compulsory military service and alternative service should be based on reasonable and objective criteria.

The right to freedom of opinion and expression

Key legal texts I

Article 19 (1) and (2) of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The right to freedom of opinion and expression

Key legal texts II

Article 19 (3) of the International Covenant on Civil and Political Rights:

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights and reputation of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

The right to freedom of opinion and expression

Key legal texts III

Article 9 of the African Charter on Human and Peoples' Rights:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

The right to freedom of opinion and expression

Key legal texts IV

Article 13 (1) and (2) of the American Convention on Human Rights:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - (a) Respect for the rights or reputations of others; or
 - (b) The protection of national security, or public order or public health or morals.

The right to freedom of opinion and expression

Key legal texts V

Article 13 (3) and (4) of the American Convention on Human Rights:

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of Government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinion.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

The right to freedom of opinion and expression

Key legal texts VI

Article 13 (5) of the American Convention on Human Rights:

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

The right to freedom of opinion and expression

Key legal texts VII

Article 10 (1) of the European Convention on Human Rights:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The right to freedom of opinion and expression

Key legal texts VIII

Article 10 (2) of the European Convention on Human Rights:

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

Freedom of opinion under article 19 (1) of the International Covenant on Civil and Political Rights

Article 19 (1) of the International Covenant on Civil and Political Rights guarantees the right to hold opinions without interference. This right must be subjected to no exception or restriction.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means I

As a point of departure, the right to freedom of expression in article 19 (2) of the Covenant can be described as all-encompassing in that it includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether in oral, written or printed form and through any media of one's choice. Art is a form of expression protected by article 19 (2).

Freedom of expression may only be limited on the basis of articles 19 (3) and 20 of the Covenant.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means II

Freedom of information as guaranteed by article 19 of the International Covenant on Civil and Political Rights does not include a right to speak the language of one's choice in court proceedings.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means III

Freedom of expression as guaranteed by article 19 (2) of the International Covenant on Civil and Political Rights is not limited to means of political, cultural and artistic expression, but covers every form of subjective ideas and opinions capable of transmission to others, such as commercial advertising.

Outside the public sphere, a person has the right to choose the language in which he or she wants to express himself or herself. In the sphere of public life, a State may, however, choose one or more official languages.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means IV

State parties to the International Covenant on Civil and Political Rights must ensure that laws on defamation and dissemination of false information comply with the principle of legal certainty; in other words, such laws must be sufficiently detailed to allow persons to know what type of conduct violates the law.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means V

Legislative provisions which, for instance, limit the freedom of expression by generally penalizing “disrespect for authority” and criticism of governing bodies and ruling parties are not consistent with article 19 of the Covenant.

The effective protection of freedom of expression is indispensable for the implementation of the freedoms of peaceful assembly and association in articles 21 and 22 of the Covenant.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means VI

The exercise of the freedom of expression carries with it special duties and responsibilities.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means VII

Denial of crimes against humanity and incitement to discrimination may in certain circumstances justify restrictions on the exercise of the freedom of expression for the protection of the rights and freedoms of others. The term “rights or reputation of others” in article 19 (3) (a) of the International Covenant may in this respect relate either to other persons or to a community as a whole.

It is particularly important for State parties to ensure that the public education of young children is free from bias, prejudice and intolerance.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means VIII

Freedom of expression is of paramount importance in a democratic society and restrictions on the exercise of this freedom must therefore meet a strict test of justification, according to the Human Rights Committee.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means IX

When invoking one or more of the legitimate purposes listed in article 19 (3) of the International Covenant on Civil and Political Rights in order to justify restrictions on the exercise of freedom of expression, the State must provide sufficient specific and reliable details to substantiate their arguments; general references to notions such as national security and public order (*ordre public*) are insufficient and will not be accepted by the Human Rights Committee as a justification for restrictions on the exercise of freedom of expression.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means X

The right to freedom of expression, including freedom of the press, as guaranteed by article 19 of the International Covenant on Civil and Political Rights may have to be interpreted in the light of other provisions of the Covenant, such as article 25 concerning the right to take part in the conduct of public affairs. The effective exercise of that right presupposes a free flow of information and ideas between citizens on public and political issues, including a free press and other media which are able to comment on public issues without censorship or restraint.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means XI

The right of journalists to have access to information in accordance with article 19 (2) of the Covenant, implies, inter alia, that criteria for accreditation schemes must be specific, fair and reasonable and that there must be no arbitrary exclusion, for instance, from access to parliamentary debates.

The right to freedom of the press means that harassment of journalists is strictly prohibited under article 19 of the Covenant. Freedom of the press presupposes that journalists must be able to exercise their functions safely and to travel freely.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means XII

Censorship and penalties against organs of the press constitute obstacles to the effective exercise of the freedom of the press. Article 19 (3) does not allow the use of vaguely defined offences for the imposition of restrictions on mass media in order to silence criticism of the Government.

Freedom of expression under article 19 (2) and (3) of the International Covenant on Civil and Political Rights

What it means XIII

The right to freedom of expression must be effectively guaranteed to all those who defend human rights and fundamental freedoms even though their activities may imply criticism of Government policies. The exercise of their freedom of expression must be restricted on no grounds other than those contained in the applicable international treaties.

Freedom of expression under article 9 of the African Charter on Human and Peoples' Rights

What it means I

The right to freedom of expression as guaranteed by article 9 of the African Charter on Human and Peoples' Rights also protects the freedom of the press.

The payment of a reasonable fee for the registration of a newspaper is not, however, contrary to article 9, unless it is excessive. On the other hand, the registration of newspapers may not be used as a way of endangering the right of the public to receive information as guaranteed by article 9 (1) of the Charter. It is for the Government to prove that the limitations imposed on the exercise of a right can be justified under article 27 (2) of the Charter.

Freedom of expression under article 9 of the African Charter on Human and Peoples' Rights

What it means II

Domestic law cannot nullify the right to freedom of expression and the right to disseminate one's opinions, because international human rights standards prevail over national law.

Under the African Charter, limitations on the exercise of rights must never sap the rights of their substance and can be imposed only for the legitimate reasons described in article 27 (2) of the Charter. Limitations must also be strictly proportionate to the legitimate aim to be achieved.

Freedom of expression under article 9 of the African Charter on Human and Peoples' Rights

What it means III

The freedom to express one's opinion implies the right to do so peacefully in public, free from fear of arrest, prosecution and harassment.

Under the African Charter, human rights defenders have a right to freedom of expression in working for an improved understanding of peoples' rights and freedoms.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means I

The exercise of freedom of expression under article 13 of the American Convention on Human Rights must not be subjected to prior censorship. Abuses of the exercise of freedom of expression can only be lawfully controlled through the a posteriori imposition of sanctions on those who are guilty of abuses.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means II

In order to be lawful, the imposition of such subsequent liability must comply with the following requirements:

- The existence of previously established grounds for liability
- The express and precise definition of these grounds by law
- The legitimacy of the ends sought to be achieved
- Demonstration that these grounds of liability are necessary to ensure the legitimate ends

Right of reply under article 14 of the American Convention on Human Rights

Article 14 of the American Convention on Human Rights guarantees the right of reply to anyone injured by inaccurate or offensive statements or ideas disseminated to the public.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means III

The right to freedom of expression in article 13 of the American Convention on Human Rights includes not only the right to express one's own thoughts but also the right and freedom to seek, receive and disseminate information and ideas of all types and by whatever method one considers appropriate.

This also means that the freedom of expression has an individual as well as a social dimension both of which must be guaranteed simultaneously. On the one hand, no individual may be arbitrarily prevented from expressing his or her own thoughts. On the other hand, there is a collective right to receive information from others, and thoughts and opinions expressed by them.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means IV

The interrelationship between the individual and the social dimensions of freedom of expression implies, furthermore, that limitations on the opportunities to disseminate information will to the same extent restrict the freedom of expression.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means V

In a democratic society the media is a true instrument of freedom of expression and, in order for a society to be free, journalists must be able to exercise their professional responsibilities independently and in safe conditions.

The right to impart information cannot be invoked to justify prior censorship and the establishment of monopolies within the media.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means VI

Freedom of expression is the basic element of the public order of a democratic society; it presupposes both the widest possible circulation of news, ideas and opinions and the widest possible access to information by society as a whole.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means VII

The hallmark of the concept of public order in a democratic society is free debate, that is, a debate where dissenting opinions can be fully heard and where, consequently, views can be disseminated even though they may shock, offend or disturb.

A society that is not well informed is not truly free.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means VIII

The term “necessary to ensure” means that a restriction imposed on the exercise of freedom of expression must be interpreted in the light of the just or legitimate demands of a democratic society. The restrictions must be justified by a compelling governmental interest in such society, which clearly outweighs society’s interest in full enjoyment of the freedom of expression. Restrictions are not “necessary” if only shown to be useful or desirable.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means IX

The term “necessary” consequently also means that restrictions must be proportionate to the legitimate compelling objective necessitating it and that the States have to select the least invasive restriction needed to obtain the objective.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means X

Indirect measures to control the mass media for the purpose of impeding the communication and circulation of ideas and opinions of public interest are contrary to article 13 (1) and (3) of the American Convention. Prohibited measures may thus involve indirect governmental or private controls over the mass media and a variety of other actions including harassment of journalists and owners of newspapers and radio and television stations.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means XI

The organization of professionals, such as lawyers and medical doctors, is not, per se, contrary to article 19 of the American Convention on Human Rights, given that such associations provide a means of ensuring that their members act in good faith and in accordance with the ethical demands of the profession.

Freedom of expression under article 13 of the American Convention on Human Rights

What it means XII

On the other hand, because journalism is the primary and principal manifestation of freedom of expression of thought in a democratic society, it would violate the principles of a democratic public order, on which the American Convention is based, to require them to belong to a specific organization if that compulsory membership denied them full access to the news media in order to express their views and transmit information.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means I

In contrast to article 13 of the American Convention on Human Rights, article 10 of the European Convention on Human Rights does not expressly prohibit prior restraints on publication. However, in view of the inherent danger of such restraints, they must be subjected to the most careful scrutiny by the European Court of Human Rights.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means II

In order to be lawful, any formalities, conditions, restrictions or penalties imposed by the Contracting States on the freedom of expression under article 10 of the European Convention must cumulatively comply with the principle of legality, the condition of legitimate purpose and the principle of necessity in a democratic society.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means III

Freedom of expression as guaranteed by article 10 of the European Convention on Human Rights constitutes one of the essential foundations of a democratic society.

Freedom of expression is also one of the basic conditions for the progress of a democratic society as well as for the development of every human person.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means IV

Among the hallmarks of a democratic society are pluralism and tolerance, which means that, subject to the restrictions defined in article 10 (2) of the European Convention, the right to freedom of expression covers not only information and ideas that are considered acceptable or otherwise inoffensive, but also information and ideas that offend, shock or disturb the State or any part of its population.

These principles are of particular importance to the press, which plays the role of a public watchdog by imparting information and ideas. These principles are also important to the public, which has the right to receive such information and ideas.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means V

The term “necessary in a democratic society” in article 10 (2) of the European Convention means that there must be “a pressing social need” for limitations imposed on freedom of expression. It must, in other words, be “convincingly established” that the measures concerned are proportionate to the legitimate aim pursued. To this end, the Contracting States have to show that the reasons adduced in support of the measures are both “relevant” and “sufficient”. It is not enough in order to fulfil this requirement that the Contracting States show that they have acted carefully or in good faith.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means VI

Although the domestic authorities have a certain margin of appreciation in deciding the necessity of a measure, this power is coupled with supervision carried out by the European Court of Human Rights.

The State's power of appreciation is not identical in each situation but changes with the legitimate aim to be protected; the more objective the legitimate purpose, the less power of appreciation is granted to the States in deciding on the necessity of the restrictive measures.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means VII

Subject to the restrictions specified in article 10 (2) of the European Convention on Human Rights, freedom of expression has to be guaranteed so as to allow the press to perform its task as purveyor of information and public watchdog.

Freedom of political debate is at the very core of the concept of a democratic society with prevails throughout the European Convention.

Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means VIII

Freedom of the press protects not only the substance of ideas and information expressed but also the form in which they are conveyed, and journalists have consequently the right to decide what technique of reporting to adopt.

The exercise of the freedom of expression carries with it “duties and responsibilities” and, in order to benefit from the protection of article 10 of the Convention in relation to reporting on issues of general interest, journalists are subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of their profession.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means IX

News reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of public watchdog. Punishment of journalists for assisting in the dissemination of statements by other persons should not therefore be envisaged unless there are particularly strong reasons for doing so.

Convictions or other sanctions are likely to hamper the press in performing its task as a public watchdog.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means X

It may be necessary in a democratic society to restrict the exercise of freedom of expression in order to, for instance, maintain the authority and impartiality of the judiciary and to protect “the reputation or rights of others”.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XI

However, a matter does not cease to be of public interest just because it is part of pending litigation. It is therefore justified to interfere with the freedom of expression in such a matter only if the interference corresponds to a social need sufficiently pressing to outweigh the public interest in a free flow of information. The Contracting States must provide relevant and sufficient reasons to establish convincingly that such a pressing social need exists to justify the interference concerned.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XII

Although political leaders enjoy protection for their “reputation or rights” under article 10 (2) of the Convention, the limits of acceptable criticism are wider as regards politicians than as regards private individuals. When politicians act in their official capacity, the requirements for their protection under article 10 (2) must be weighed in relation to the interests of an open discussion of political issues.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XIII

There is little scope under article 10 (2) of the European Convention for restrictions on political speech or on debate on questions of public interest. However, in criticizing others, there is a limit which may not be exceeded.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XIV

Restrictions placed on the right to impart and receive information on arguable allegations of, for instance, police misconduct call for strict European-level supervision; the same holds true with regard to restrictions on speech aimed at countering such allegations, since they form part of the same debate.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XV

This approach is particularly valid where the statements have been made by elected representatives of professional organizations in response to alleged violations of professional integrity and ethics.

Moreover, the freedom of expression guaranteed by article 10 of the European Convention on Human Rights is one of the principal means of securing the effective enjoyment of the freedoms of assembly and association guaranteed by its article 11.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XVI

Freedom of expression as guaranteed by article 10 of the European Convention is of particular importance for elected representatives of the people, such as members of local, regional and national parliaments, who are representing and defending the interests of their electorate.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XVII

When entering the arena of public debate, politicians lay themselves open to close scrutiny of what they do and what they say. They must therefore accept wider limits of criticism as well as a corresponding greater degree of tolerance. The same holds true with regard to private persons and associations who participate in political debates on public concerns.

In a democratic society, where the parliament and other elected bodies are the essential forums for political debate, very weighty reasons must be advanced to justify restrictions on the freedom of expression exercised in such forums.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XVIII

Freedom of artistic expression is protected by article 10 of the European Convention on Human Rights and is an essential component of a democratic society.

Freedom of artistic expression includes, in particular, the freedom to receive and impart information and ideas which enable people to take part in the public exchange of cultural, political and social information and ideas of all kinds.

Freedom of expression under article 10 of the European Convention on Human Rights

What it means XIX

The exercise of the freedom of artistic expression cannot be lawfully interfered with on any grounds other than those specified in article 10 (2) of the European Convention.

In order to determine what is necessary in a democratic society to protect public morals, the Contracting States have a wider margin of appreciation than when they impose restrictions on the exercise of freedom of expression for legitimate aims that are of a more objective nature.

Freedom of association

Key legal texts I

Article 22 (1) and (2) of the International Covenant on Civil and Political Rights:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Freedom of association

Key legal texts II

Article 22 (3) of the International Covenant on Civil and Political Rights:

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Freedom of peaceful assembly

Key legal texts I

Article 21 of the International Covenant on Civil and Political Rights:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The freedoms of association and assembly

Key legal texts I

Article 10 of the African Charter on Human and Peoples' Rights:

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in [article] 29 no one may be compelled to join an association.

The freedoms of association and assembly

Key legal texts II

Article 11 of the African Charter on Human and Peoples' Rights:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Freedom of association

Key legal texts III

Article 16 of the American Convention on Human Rights:

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Freedom of peaceful assembly

Key legal texts II

Article 15 of the American Convention on Human Rights:

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others.

The freedoms of association and peaceful assembly

Key legal texts

Article 11 of the European Convention on Human Rights:

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

The freedoms of association and assembly under articles 22 and 21 of the International Covenant on Civil and Political Rights

What they mean I

Restrictions on the exercise of the freedom of expression under article 19 (3) of the International Covenant on Civil and Political Rights may not impede the full and effective enjoyment of the freedoms of association and peaceful assembly guaranteed by articles 22 and 21 of the Covenant.

The right to freedom of association in article 22 of the International Covenant protects, inter alia, the right to form political parties, trade unions and private associations such as non-governmental organizations, including human rights organizations.

The freedoms of association and assembly under articles 22 and 21 of the International Covenant on Civil and Political Rights

What they mean II

Article 22 of the Covenant does not authorize the State parties to ban civil servants from forming associations and entering into collective bargaining. Restrictions on the right to freedom of association must strictly respect the conditions laid down in article 22 (2) of the Covenant.

The freedoms of association and assembly under articles 22 and 21 of the International Covenant on Civil and Political Rights

What they mean III

The State parties must also ensure that the right to peaceful assembly is guaranteed on the correspondingly strict conditions in article 21 of the Covenant and that limitations on its exercise do not exceed those expressly permitted thereby.

This means, in particular, that rules requiring prior permission for the holding of assemblies or demonstrations or any other rules or requirements governing the holding or conduct of public assemblies must be limited to those necessary in a democratic society for the legitimate purposes enumerated in article 21.

The freedoms of association and assembly under articles 22 and 21 of the International Covenant on Civil and Political Rights

What they mean IV

The wholesale ban on demonstrations for reasons such as public safety and national security is not compatible with the freedom of peaceful assembly as guaranteed by article 21 of the International Covenant.

The State parties have a legal duty to provide effective remedies to persons who consider that their right to the freedoms of association and of peaceful assembly have been violated.

The freedom of association under article 10 of the African Charter on Human and Peoples' Rights

What it means I

Under article 10 of the African Charter on Human and Peoples' Rights, freedom of association implies that political parties must be allowed to be created and to function even though they do not support the party in power. Harassment of political parties constitutes a violation of the freedom of association.

Freedom of association under article 10 of the Charter also means that human rights organizations must be able to function effectively for the purpose inter alia of teaching human rights.

The freedom of association under article 10 of the African Charter on Human and Peoples' Rights

What it means II

Freedom of association under article 10 further implies that Bar Associations must be able to function freely without there being any governmental interference with their self-governance.

The freedom of association under article 10 of the African Charter on Human and Peoples' Rights

What it means III

Limitations on the exercise of the right to freedom of association in article 10 of the African Charter must not undermine fundamental human rights and freedoms guaranteed either by national constitutions or by international legal standards.

It is a violation of the right to freedom of association in article 10 of the Charter to be found guilty of a criminal offence, such as murder, by the mere fact of being a member of an association.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean I

The right to form and to join trade unions under article 11 of the European Convention on Human Rights is a special aspect of freedom of association.

The term “freedom” implies some measure of choice as to its exercise, but does not necessarily mean that compulsion to join a specific trade union is always contrary to the European Convention on Human Rights.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean II

An obligation to join a specific trade union at the threat of dismissal involving loss of livelihood is a form of compulsion which has been considered to strike at the very substance of the freedom of association as guaranteed by article 11 of the European Convention. In order to be lawful, such interference with the exercise of a person's freedom of association must comply with the restrictions laid down in article 11 (2) of the Convention.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean III

Although autonomous, article 11 must be considered in the light of articles 9 and 10 of the Convention guaranteeing the freedoms of thought, conscience, religion and expression. This means that, in exercising the freedoms of association and assembly, it is also relevant to respect a person's other fundamental freedoms.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean IV

The Contracting States to the European Convention on Human Rights must respect the freedom of association laid down in its article 11 (1) also when they act as employers, and regardless of whether their relations with the employees are governed by public or private law.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean V

The Convention requires that, under national law, trade unions should be enabled, in conditions not at variance with the terms of article 11, to strive for the protection of their members' interests. This means that the trade union should be heard, although the Contracting States are free to choose the means whereby this end is obtained.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean VI

The conclusion of collective agreements is one of several means of letting trade unions be heard. It is not incompatible with the trade union freedoms as guaranteed by article 11 of the European Convention for a State as employer to limit the conclusion of collective agreements to a certain number of trade unions, provided that all unions are able to strive for the protection of their members' interests in accordance with article 11.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean VII

Democracy is a fundamental feature of the European public order, and the only political model compatible with the European Convention on Human Rights.

There is no democracy where the people of a State, even by majority decision, waives its legislative and judicial powers in favour of an entity which is not responsible to the people it governs, whether it is secular or religious.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean VIII

In a democratic society, the State is the ultimate guarantor of the principle of pluralism. It is also the guarantor of individual rights and freedoms and the impartial organizer of the practice of the various beliefs and religions in such society. This means that the State must ensure that every person within its jurisdiction enjoys fully the rights and freedoms guaranteed by the Convention. These rights and freedoms cannot be waived by anybody.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean IX

The rule of law has a key role to play in a democratic society. This means, for instance, that all human beings are equal before the law, in their rights as in their duties, and that, consequently, there must be no discrimination between them.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean X

Political parties are a form of association essential to a democratic society and are protected by article 11 of the European Convention on Human Rights.

The right to freedom of association in political parties must also be considered in the light of the right to freedom of religion, thought, opinion and expression as guaranteed by articles 9 and 10 of the European Convention. This is in the light of the essential role played by political parties in ensuring pluralism and a functioning democracy.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XI

In view of the important role played by political parties in a democratic society, only convincing and compelling reasons can justify restrictions on their freedom of association. This means that the Contracting States have only a narrow margin of appreciation in deciding on the need for a restriction on the exercise of this right and that the corresponding European supervision is rigorous. Any restrictions on the exercise of the rights contained, inter alia, in articles 9–11 of the Convention must, in other words, spring from the pressing needs of a democratic constitutional order.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XII

One of the principal characteristics of a democracy is the opportunity it offers for resolving a country's problems through dialogue and without recourse to violence. Democracy thrives on a generously understood and applied freedom of expression. There cannot, consequently, be any justification for not allowing political parties to seek public debate on issues of general interest as long as they do so according to democratic rules.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XIII

The fact that the constitution and programme of a political party may be considered incompatible with the principles and structures of a Contracting State does not make it incompatible with the rules of democracy as understood by the European Convention on Human Rights.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XIV

Political parties that, in their constitutions, programmes or activities, want to introduce a plurality of legal systems, profess or fail to disavow violence for political aims, or show disrespect and hatred for political opponents will not enjoy protection of the freedom of association as guaranteed by article 11 of the European Convention on Human Rights.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XV

The right to freedom of assembly guaranteed by article 11 of the European Convention on Human Rights must be guaranteed to lawyers so long as the person himself or herself has committed no reprehensible act.

There are situations which require that article 11 be considered also in the light of the protection of personal opinions as secured by article 10 of the Convention, since such protection is one of the objectives of freedom of peaceful assembly.

The freedoms of association and assembly under article 11 of the European Convention on Human Rights

What they mean XVI

The principle of proportionality, which is one of the conditions laid down in article 11 (2) for imposing restrictions on the exercise of the freedom of assembly, requires that a balance be struck between, on the one hand, the requirements of the legitimate purposes cited in it and, on the other hand, the requirements of the freedom of expression of opinions by word, gesture or even silence by persons assembled in public places.