The Interrelation of Private and Political Autonomy under the ECHR:

A Theoretical and Jurisprudential Analysis

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Contents

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University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

I. Introduction

The relationship between democracy and human rights is one of the most contested subjects in legal philosophy.[1] Traditionally, legal philosophy tends to present them as distinct, if not opposed: democracy as an expression of collective will, human rights as its limit. This classical dichotomy – between individual liberty and collective self-determination – is mirrored in the jurisprudence of the European Court of Human Rights (ECtHR).

Since the European Convention on Human Rights (the Convention or ECHR) presupposes democracy but does not itself define it, the ECHR's understanding of democracy[2] – or, more precisely: the outer limits of that concept – must be inferred from the ECtHR's jurisprudence on the so-called "political rights", most notably freedom of expression, freedom of association, and the right to vote. As a consequence, the traditional debate on the relationship of democracy and human rights is, within the Convention framework, reframed as a debate between different kinds of human rights – the already mentioned political rights that enable participation in collective self-government and those that safeguard the individual's capacity for self-determination in the private sphere, especially Articles 8, 9 and 14. These two groups can be further categorized into those protecting "political autonomy" and those protecting "private autonomy".[3]

In the ECtHR's case-law, the classical debate therefore manifests especially through balancing exercises between these two groups: human rights safeguarding private autonomy are weighed against political ones, with the latter being almost

[1] Alexy, 'Die Institutionalisierung der Menschenrechte im demokratischen Rechtsstaat', in Lohmann, Gosepath (eds.) *Philosophie der Menschenrechte* (Frankfurt aM 1998) 244 (261); Habermas, *Between Facts and Norms* (Cambridge 1996); Menke and Pollmann, *Philosophie der Menschenrechte* (Hamburg 2017) 170-185; Höffe, 'Die Menschenrechte als Legitimation und kritischer Maßstab der Demokratie', in Schwartländer (ed.) *Menschenrechte und Demokratie* (Kehl 1981) 241-274; Böckenförde, 'Ist Demokratie eine notwendige Forderung der Menschenrechte?', in Lohmann, Gosepath (eds.) *Philosophie der Menschenrechte* (Frankfurt aM 1998) 233-243.

[2] On the ECtHR's concept of democracy see Oppitz, 'Der Demokratiebegriff des EGMR' (2013) juridikum 4, 412-423; O'Connell, *Law, Democracy and the European Court of Human Rights* (Cambridge 2020).

[3] For the distinction between private and political autonomy, see below II.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

unquestioningly endowed with a collective, 'democratic' value,[4] while the former are not granted an equivalent normative collective weight in democracies.

Drawing on contemporary political theory and the jurisprudence of the ECtHR, this paper argues that private autonomy (the freedom to lead one's life according to self-defined purposes) and political autonomy (the ability to participate in collective self-determination) are not only normatively compatible, but mutually constitutive within the logic of the Convention system. Democratic participation, as envisioned by the Convention system, presupposes the existence of individual freedom and private autonomy: it can only fulfil its promise of equal participation if individuals possess the private autonomy necessary to engage meaningfully in collective self-rule. "Democracy" in this sense therefore must not be viewed solely through the lens of political rights, nor deployed to justify restrictions on private autonomy. Rather, limitations on private autonomy must themselves be scrutinized for their impact on the conditions of democratic participation.

To make this case, the article proceeds in four stages: Section II sets out the theoretical foundations of autonomy as a personal and political value. It distinguishes different conceptions of autonomy, drawing on contemporary jurisprudence on the matter. It further clarifies the distinction between autonomy and related terms such as freedom of will, identity, and self-determination, and identifies the conditions under which legal systems should protect autonomy interests.

Section III turns to the ECtHR's jurisprudence on private autonomy. It analyses the development of identity-based rights, focusing on key lines of case-law (including gender identity, religious dress, sexual identity), the Court's emerging doctrine of positive obligations, and the role of anti-discrimination guarantees.

Section IV addresses political autonomy under the Convention, examining the jurisprudence on Article 3 Protocol No.1 (voting rights), Article 10 (freedom of expression), and Article 11 (freedom of association) of the ECHR. It examines how the ECtHR has responded to disenfranchisement, party bans, speech restrictions, and protest regulation in its jurisprudence.

Finally, section V draws the doctrinal and normative threads together. It argues that private and political autonomy should not be placed in a zero-sum opposition but understood as interdependent conditions of democratic citizenship. The section proposes a revised interpretive approach that resists the reflexive privileging of

[4] The Court regularly stresses that freedom of expression is one of the 'essential foundations of a democratic society and one of the basic conditions for its progress', for example: *United Macedonian Organisation Ilinden et al v. Bulgaria,* App no 59491/00 (ECtHR, 19 January 2006) para. 60.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

collective interests and evaluates restrictions on individual autonomy in terms of their broader impact on political equality, participation, and visibility.

II. Theoretical Foundations: Autonomy as a Private and Political Value

Depending on context, the term "autonomy" as used in political theory may signify moral self-determination,[5] legal status,[6] political participation,[7] existential authenticity[8] or independence.[9] For the purposes of this paper, a general distinction has to be made between personal and collective autonomy. The term "personal autonomy" refers to the capacity of individuals to shape and pursue their own conception of a meaningful life.[10] Collective autonomy, on the other hand, concerns a community's ability to organise their common affairs through self-legislated procedures. In context of democracies, the idea of collective autonomy is captured by the notion of popular sovereignty, which describes the people as the ultimate source of legitimate authority.[11]

Given that the Convention primarily protects individual rights, this paper places the focus on personal autonomy,[12] which, in turn, can be further divided into private and political autonomy, which mirror the distinction between private and political rights. They are "co-original"[13], to borrow a phrase used by Jürgen Habermas in this context. The following sections examine these two dimensions in turn and consider how they structure the Court's understanding of personal autonomy.

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[5] See generally Kant, *Groundwork on the Metaphysics of Morals* (Cambridge 1998); Korsgaard, *The Sources of Normativity* (Cambridge 1996).

[6] See generally Raz, *The Morality of Freedom* (Oxford 1986); Feinberg, *Harm to Self* (Oxford 1986).

[7] See below point II. B.

[8] See below point II. B.

[9] See Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (Oxford 1969).

[10] See generally Raz, *Morality* ; Dworkin, *The Theory and Practice of Autonomy* (Cambridge 1988); Taylor, *The Ethics of Authenticity* (Cambridge 1991).

[11] See generally Rousseau, *The Social Contract* (1762); Habermas, *Facts and Norms*; Arendt, *On Revolution* (New York 1963).

[12] Therefore, when autonomy is referred to in the following, the term is used in the sense of personal autonomy.

[13] Habermas, *Facts and Norms* 104.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

A. The Private and the Political Side of Personal Autonomy

Read literally, personal autonomy suggests self-legislation. While private autonomy (a subset of personal autonomy) concerns the ability and opportunity to lead a life in line with one's self-chosen aims in pursuit of a self-concepted good life; while political autonomy concerns the participation in the making of the rules a political community gives itself for its common life. Whereas the "collective autonomy" concerns the independence of the community/state as such, political autonomy as a component of personal autonomy describes the individual's participation in the formation of the community's collective will.

Baer and Sacksofsky point out that legal discourse often mistakenly equates the concept of autonomy with that of negative freedom, i.e. the absence of external obstacles.[14] According to this view, the law is primarily intended to set the limits of freedom, but not to "regulate" its exercise. In contrast, outside of legal debates, the concept of autonomy is generally understood to mean much more than the mere absence of obstacles. Especially feminist critics have pointed out early that humans are always embedded in their environment[15] and that autonomy does not simply accrue to all people in a comprehensive sense from birth, but as a capability, it is dependent on different, internal and external conditions, which may be stronger or weaker depending on the theory.

B. Conditions of Autonomy

Despite their differences, modern accounts of autonomy converge on a critical point: that autonomy is not reducible to mere choice. It is a normative status that depends on both individual capacities and institutional arrangements. As an example, the particularly compelling account of conditions under which autonomy can be realised as represented by modern liberal philosophers such as Elisabeth Holzleithner or Beate Rössler will be briefly outlined. Holzleithner's starting point is that autonomy depends on having a genuine set of viable life options. A decision only carries weight if it is made against the background of real alternatives.[16] The insight that the "choice" between the "devil and the deep blue sea" does not deserve the label "choice" has become a proverb. None of the alternatives is desirable and it is not possible to

[14] Baer and Sacksofsky, 'Autonomie im Recht – geschlechtertheoretisch vermessen' in Baer, Sacksofsky (eds.) *Autonomie im Recht – geschlechtertheoretisch vermessen* (Baden-Baden, 2018) 11 (11).

[15] Benhabib, 'Der verallgemeinerte und der konkrete Andere' in List, Studer (eds.) *Denkverhältnisse* (Frankfurt aM, 1989) 1 (11).

[16] Holzleithner, *Dimensionen gleicher Freiheit* (unpublished habilitation thesis, 2011) 374.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

choose sensibly between the two options. Holzleithner rightly argues that life possibilities do not always exist naturally but are dependent on society, the environment and the law.[17] Their configuration determines how far the promise of personal autonomy can be realised in practice.

Secondly, autonomy requires the emotional and intellectual abilities to perceive these options, to reflect on them and to decide for or against them.[18] Autonomous decisions therefore presuppose the capacity for insight and the mental ability to act rationally, i.e. to act for reasons. However, according to Rössler these conditions must not be overstretched and must not be based on a completely rational person, but on a socially situated, imperfect one.[19]

Finally, autonomy requires the absence of manipulation.[20] Mental abilities alone do not always protect against decisions sometimes being influenced by external pressure and manipulation. To prevent this condition of autonomy from becoming too excessive, Holzleithner qualifies it with the word "relative." Similarly, for Rössler, the focus must be on the conditions under which one's own desires develop. Individuals must not be structurally prevented from being able to identify with the options they face.[21]

C. Differentiation Between Autonomy and Intersecting Concepts

Building on this, it is important to distinguish personal autonomy from several adjacent ideas – both to avoid conceptual confusion and to clarify its legal significance.

First, as argued above, autonomy requires but is not reducible to free will. While it presupposes a basic capacity for volition, its normative force lies in the conditions that make volitional acts socially and legally meaningful. Autonomy is about agency under recognisable conditions of choice – not about metaphysical indeterminacy or uncaused action.

Second, autonomy must be distinguished from identity. Many autonomy claims are identity-based – especially those involving gender, sexuality, culture or religion. However, as Jill Marshall points out, the normative basis of autonomy lies not in

[17] Holzleithner, 'Der Kopftuchstreit als Schauplatz der Debatten zwischen Feminismus und Multikulturalismus: Eine Analyse entlang der Bedingungen für Autonomie' in Berghahn, Rostock (eds.) *Der Stoff aus dem Konflikte sind* (Bielefeld, 2009) 341 (349).

[18] Holzleithner, *Dimensionen* 374.

[19] Rössler, *Autonomie* (Berlin 2017) 39.

[20] Holzleithner, *Dimensionen* 374.

[21] Rössler, *Der Wert des Privaten* (Frankfurt aM, 2001) 119.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

affirming fixed identities, but in enabling self-formation.[22] The legal focus should be on protecting the individual's capacity to revise, affirm or reject aspects of their identity, not on reifying identity categories. Autonomy thus protects the space for personal authorship, not the content of a particular self.[23]

Third, autonomy is conceptually distinct from human dignity, though both are foundational in human rights law. Human dignity grounds the equal worth of all humans and justifies the universal application of rights. Autonomy, by contrast, concerns the individual's capacity for self-direction within that framework of equal status. While dignity may justify limitations on autonomy in certain contexts (e.g. protecting others from harm), it also demands that individuals be treated as agents, not objects of welfare or discipline.[24]

Finally, autonomy must not be misunderstood as isolation from the community. As shown above, modern accounts of autonomy, such as those outlined by Rössler and Holzleithner, have shown that autonomy is not about isolation or self-sufficiency, but about having access to supportive social conditions and meaningful relationships. Therefore, autonomy is realised through interdependence, not despite it. This insight is particularly important when evaluating state obligations: non-interference is not enough; enabling conditions must also be ensured.

III. Private Autonomy in ECtHR Jurisprudence

Within the ECHR, private autonomy, as outlined so far, is most explicitly protected under Articles 8, 9, 10 and 14 ECHR. These provisions enshrine the right to respect for private and family life (Article 8), freedom of thought, conscience, and religion (Article 9), and freedom of expression (Article 10) and anti-discrimination (Article 14). Together, they constitute the legal architecture within which individuals are enabled to develop, express, and live out their conception of a meaningful life.

[22] Marshall, *Human Rights Law and Personal Identity* (Oxon 2014) 162-167; see also Trotter, 'Narratives of absence' in Marshall (ed.) *Personal Identity and the European Court of Human Rights* (Oxon 2022) 27-48.

[23] Marshall, *Personal Identity* 237-243,

[24] Marshall, *Personal Identity* 28-33.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

The ECtHR has repeatedly affirmed that autonomy is a core value underlying the Convention.[25] In cases ranging from gender recognition[26] and sexual orientation[27] to religious clothing,[28] to name just a few, the Court has – in theory – acknowledged that the protection of identity-related choices is essential to human dignity. However, the case-law remains fragmented, and the Court often refrains from engaging in a principled discussion of autonomy as such. Instead, judgements tend to focus on proportionality and the limits of the margin of appreciation,[29] without clarifying why certain interferences with personal freedom are more problematic than others.

In this landscape, "autonomy" often appears as a rhetorical device rather than a normative framework. This problem is sharpened by the Court's inconsistent use of the aforementioned key terms, such as freedom, dignity and identity. These concepts are treated as interchangeable, and at times they appear in unhelpful chains of these notions.

Against this background, the following analysis seeks to trace the contours of how private autonomy has been interpreted and applied in key lines of case-law, focusing on the following clusters: identity and legal recognition, bodily integrity and personal risk and religious and cultural expression.

A. Identity and Legal Recognition

The ECtHR has gradually developed a body of jurisprudence that links Article 8 to the protection of personal identity. This development is most visible in its evolving approach to gender identity and sexual orientation, where the Court acknowledged

[25] *Christine Goodwin v. United Kingdom,* App no. 28957/95 (ECtHR, 11.07.2002) para. 90.

[26] E.g. *Christine Goodwin v. United Kingdom,* App no. 28957/95 (ECtHR, 11.07.2002); *Van Kück v. Germany,* App no. 35968/97 (ECtHR, 12.09.2003); *Grant v. United Kingdom,* App no. 32570/03 (ECtHR 23.05.2006); *Hämäläinen v. Finland* App no. 37359/09 (ECtHR, 16.07.2014); *A.P., Garçon and Nicot v. France,* App nos. 79885/12, 52471/13 and 52596/13 (ECtHR, 06.04.2017).

[27] E.g. *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981); *Karner v. Austria,* App no. 40016/98 (ECtHR, 24.07.2003); *Schalk and Kopf v. Austria,* App no. 30141/04 (ECtHR 24.06.2010); *Identoba and others v. Georgia,* App no. 73235/12 (ECtHR, 12.05.2015).

[28] E.g. *Dahlab v. Switzerland,* App no. 42393/98 (ECtHR, 15.02.2001); *Leyla Şahin v. Turkey,* App no. 44774/98 (ECtHR 10.11.2005); *Eweida and others v. United Kingdom,* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR 15.01.2013); *S.A.S. v. France,* App no. 43835/11 (ECtHR, 01.07.2014).

[29] The margin of appreciation denotes the discretion granted to Member States sin determining how Convention rights are implemented. The Court recognises this leeway where national authorities are better placed to assess local needs or moral or social conditions, yet it remains subject to European supervision that the essence of the right is not undermined. The narrower the margin, the less leeway states have to rely on their own judgment.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

that legal invisibility or exclusion can amount to a denial of personal autonomy.[30] In *Christine Goodwin v. United Kingdom* (2002), the Court recognised that the refusal to legally acknowledge a transgender woman's gender status violated her right to private life. For the first time, the Court explicitly acknowledged that legal recognition of gender identity was essential to the applicant's dignity and autonomy.[31] This decision marked a shift from earlier rulings, such as *Rees v. United Kingdom* (1986)[32] and *Cossey v. United Kingdom* (1990)[33], in which state interests in legal certainty and administrative coherence were given precedence.

Subsequent cases, including *Van Kück v. Germany* (2003)[34] and *Y.Y. v. Turkey* (2017),[35] reaffirmed the view that gender identity falls within the protected sphere of Article 8, extending the reasoning to issues of medical treatment and legal recognition. These rulings established a trajectory in which autonomy is understood not merely as freedom from interference (obligation to respect) but as the right to have one's identity recognised and supported by law (obligation to ensure). The state's role, accordingly, is not neutral: its refusal to accommodate identity-based claims may amount to a form of normative exclusion that impairs the applicant's self-conception and public standing.

Sexual orientation has followed a similar trajectory. For decades, individuals seeking protection against discrimination based on homosexuality faced the structural difficulty that the Court granted member states a wide margin of appreciation in matters of public morality, treating the regulation of homosexuality as a question of societal ethics rather than personal identity.[36] It follows, that the history of "sexual autonomy"[37] under the Convention is one of a slow and contested struggle against entrenched notions of "public decency" and its correlates of vice and immorality, a

[30] Marshall, 'An Overview of the Development of the Right to Personal Identity at the European Court of Human Rights' Jill Marshall (ed.) *Personal Identity and the European Court of Human Rights* (Oxfordshire, 2022) 11-26.

[31] *Christine Goodwin v. United Kingdom*, App no. 28957/9f (ECtHR, 11 July 2002) para. 90.

[32] *Rees v. United Kingdom*, App no. 9532/81 (ECtHR, 17 October 1986).

[33] *Cossey v. United Kingdom*, App no. 10843/84 (ECtHR, 27 September 1990).

[34] *Van Kück v. Germany*, App no. 35968/97 (ECtHR, 12 June 2003).

[35] *Y.Y. v. Turkey*, App no. 14793/08 (ECtHR, 10 March 2015).

[36] E.g, *Norris v. Ireland*, App no. 10581/83 (ECtHR, 26.1.1988) para. 46.

[37] On sexual autonomy see in particular Valentiner, *Das Grundrecht auf sexuelle Selbstbestimmung* (Baden-Baden 2021).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

struggle that began at the very core of private intimacy and gradually expanded outward into the public sphere.

Such appeals to conventional morality can be found in the dissenting opinions of *Dudgeon v. United Kingdom* (1981).[38] Several judges defended the criminalisation of homosexual conduct explicitly on moral grounds. Judge Zekia argued that democratic majorities were entitled to prohibit practices considered "unnatural" and "immoral"[39] and rejected any suggestion that Article 8 required treating homosexuality as equivalent to heterosexuality. Judge Matscher framed the prohibition as a measure to protect minors, relying on stereotypical assumption about homosexual men.[40] Judge Walsh insisted that the law derives is legitimacy from prevailing social morality, distinguished between "pathologically" homosexual individuals and those whose "normal" sexual development had merely been disrupted, and maintained that the latter group could legitimately be steered "back on the right path" through criminal sanctions.[41]

The majority, by contrast, adopted a far more forward-looking approach, detaching the issue from traditional moral conception and recognising sexuality as a part of personal identity. The Court recognised that adult consensual sexual relations belong the "the most intimate aspect of private life"[42] thereby narrowing the margin of appreciation and requiring particularly weighty reasons for state interference. This marked the first decisive step in understanding homosexuality not merely as a conduct but as an expression and integral part of personality. Subsequent judgments extended this reasoning, gradually dismantling the presumption – visible in early cases – that homosexual men posed a "specific social danger",[43] a stereotype on which the Commission had relied to uphold unequal ages of consent for heterosexual and homosexual couples. The Court's move away from these pathologizing assumptions laid the groundwork for understanding sexual orientation as part of a person's identity, deserving of protection both in intimate settings and in public life.

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[38] *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981).

[39] Dissenting Opinion of Judge Zekia in *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981) paras. 2-3.

[40] Dissenting Opinion of Judge Matscher in *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981).

[41] Dissenting Opinion of Judge Walsh in *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981) para. 13.

[42] *Dudgeon v. United Kingdom,* App no. 7525/76 (ECtHR, 22.10.1981) para. 52.

[43] *Johnson v. United Kingdom*, App no. 10389/83 (EComHR, 17 July 1986).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

This shift becomes more visible in cases concerning employment and institutional contexts, In *Lustig-Pream and Beckett v. United Kingdom* (1999)[44] and *Smith and Grady v. United Kingdom* (1999)[45] the Court held that dismissals from the Royal Navy on grounds of homosexuality violated Article 8. These judgments signalled that sexual orientation is not confined to the private home but accompanies individuals into social and professional spaces. As Marshall observed, the Court began to recognise sexual orientation as an identity that must be "respected and protected in a communal setting",[46] including workplaces and state institutions. The public dimension of private autonomy thus came into clearer view: the ability to live openly without fear of exclusion or sanction.

More recent cases additionally have confronted the vulnerability of homosexual individuals to hostility and violence in the digital public space. In *Beizearas and Levickas v. Lithuania* (2020),[47] where two men were subjects to numerous death threats and hate-filled comments after posting a picture of themselves kissing, the Court condemned the state's refusal to investigate. It characterised the authorities' suggestion that the applicants had provoked the abuse as a manifestation of a "bigoted attitude",[48] reaffirming that states have positive obligations to protect the dignity and psychological integrity of sexual minorities. The case underscores that equality and dignity require not only non-interference but active protection from demeaning forms of public exclusion.

The Court's approach to the legal recognition of same-sex relationships further solidified this understanding of sexual orientation as an aspect of personal identity. In *Karner v. Austria* (2003),[49] the Court held that same-sex partnerships fall within the scope of private and family life and that denying succession rights to a surviving same-sex partner constituted discrimination under Article 14 in conjunction with Article 8. The reasoning was later developed in *Schalk and Kopf v. Austria* (2010),[50] where the Court acknowledged for the first time that same-sex couples may constitute

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[44] *Lustig-Pream and Beckett v. United Kingdom,* App nos. 31417/96 and 32377/96 (ECtHR, 27.09.1991).

[45] *Smith and Grady v. United Kingdom,* App nos. 33985/96 and 33986/96 (ECtHR, 27.09.1999).

[46] Marshall, *Personal Freedom through Human Rights Law?* (Leiden/Boston, 2008) 118.

[47] *Beizaras and Levickas v. Lithuania*, App no. 41288/15 (ECtHR, 14 January 2020).

[48] *Beizaras and Levickas v. Lithuania*, App no. 41288/15 (ECtHR, 14 January 2020) para. 129.

[49] *Karner v. Austria*, App no. 40016/98, (ECtHR, 24 July 2003) particularly paras. 37-42.

[50] *Schalk and Kopf v. Austria,* App no. 30141/04 (ECtHR, 24 June 2010).

"family life"[51] under Article 8. Although the Court did not recognise a right to same-sex marriage, it affirmed that same-sex couples are "just as capable as different-sex couples of enter in into stable, committed relationships"[52] and have comparable interests in their legal institutionalisation. Subsequent cases, such as *Vallianatos v. Greece* (2013)[53] and *Oliari and Others v. Italy* (2015),[54] clarified that the absence of any legal framework recognising same-sex couples violates Article 8.

In these cases, the Court accepted that one's identity is shaped and expressed through intimate relationships, and legal systems that refuse to acknowledge such relationships undermine the possibility of living openly with equal social standing. Rather than merely withholding legal benefits, the denial of recognition relegates same-sex relationship to a lesser, invisible status, contradicting the very idea of equal dignity.

Taken together, these judgments reflect the Court's movement from a minimalist conception of privacy – understood as a shield against intrusion – toward a more robust notion of autonomy centred on identity, equality and social participation. The ECtHR increasingly interprets Article 8 as protecting the individual's ability to live in accordance with their sexual and gender identity both privately and publicly, so long as this not harm others. This requires not only state restraint but a supportive legal framework that prevents exclusion and affirms the equal reality of diverse intimate lives.

B. Bodily Integrity and Personal Risk

Alongside identity, a distinct strand of the Court's Article 8 jurisprudence centres on bodily integrity. While conceptually linked to identity, the doctrinal focus here lies on control over one's physical self – the ability to make informed decisions about one's body, to refuse intrusive state measures, and to pursue medical interventions aligned with one's conception of self.

The starting point is the Court's recognition that bodily integrity is protected below the threshold of Article 3. Even non-violent or non-coercive interventions can amount to an interference if the undermine a person's ability to maintain control over their physical existence. The Court has therefore treated invasive medical procedures, forced examinations and mandatory health interventions as matters

[51] *Schalk and Kopf v. Austria,* App no. 30141/04 (ECtHR, 24 June 2010) para. 94.

[52] *Schalk and Kopf v. Austria,* App no. 30141/04 (ECtHR, 24 June 2010) para. 99.

[53] *Vallianatos and Others v. Greece,* App nos. 29381/09 and 32684/09 (ECtHR, 7 November 2013).

[54] *Oliari and Others v. Italy*, App nos. 18766/11 and 36030/11 (ECtHR, 21 July 2015).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

within the scope of Article 8. This includes cases involving compulsory gynaecological examinations,[55] vaccinations[56] and other state-imposed medical measures,[57] where the key question is whether the individual's physical autonomy has been unduly constrained.

The judgement in *Pretty v. United Kingdom* (2002)[58] exemplifies the Court's cautious but decisive move towards recognising end-of-life decision-making as falling within the ambit of private life. Although the Court upheld the UK's prohibition of assisted suicide, it accepted that the capacity to determine the manner and timing of one's death is intimately linked to personal autonomy.[59] This recognition broadened the conceptual frame of bodily autonomy: even where the Convention does not guarantee a positive right to a particular course of action, Article 8 protects the intimate sphere in which such decisions are formed.

More recent cases have introduced a stricter standard. The Court has repeatedly emphasised that bodily integrity is implicated not only in direct physical interventions but also in regulatory regimes that place individuals in positions of medical or existential vulnerability. In *A.P., Garçon and Nicot v. France* (2017),[60] the Court held that conditioning legal gender recognition on sterilisation violated Article 8. Here the decisive point was not the invasiveness of the procedure alone but the structural asymmetry it produced: individuals were required to surrender control over their bodies as a precondition for state recognition of their identity. Bodily integrity thus becomes a threshold that state may not force applicants to cross in pursuit of legal coherence or administrative convenience.

The same logic underpinned earlier judgments concerning access to gender-affirming medical treatment. In *Van Kück v. Germany* (2003),[61] the Court rejected the imposition of heightened evidentiary burdens on individuals seeking coverage for gender-affirming surgery stressing that gender identity belongs to most intimate

[55] *Y.F. v. Turkey*, App no. 24209/94 (ECtHR, 22 July 2003) paras. 33-34.

[56] *Vavřička and Others v. Czech Republic*, App nos. 47621/13 and others (ECtHR, 8 April 2021).

[57] E.g. *Jalloh v. Germany*, App no. 54810/00 (ECtHR, 11 July 2006); *X v. Finland*, App no. 34806/04 (ECtHR, 3 July 2012).

[58] *Pretty v. the United Kingdom,* App no 2346/02 (ECtHR, 29 April 2002).

[59] *Pretty v. the United Kingdom,* App no 2346/02 (ECtHR, 29 April 2002) para. 74.

[60] *A.P., Garçon and Nicot v. France,* App nos. 79885/12, 52471/13 and 52596/13 (ECtHR, 06.04.2017).

[61] *Van Kück v. Germany,* App no. 35968/97 (ECtHR, 12.09.2003).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

aspects of private life. Later decisions, such as *Schlumpf v. Switzerland*[62] (2009) and *L. v. Lithuania* (2007),[63] reinforced this view by condemning regulatory gaps, arbitrary waiting periods, or procedural hurdles that left individuals in a state of uncertainty about their bodily autonomy and legal status. The underlying concern is not merely medical access, but the erosion of agency that results when the legal system places control over one's body in the hands of bureaucratic or medical gatekeepers.

Like the identity cases, the bodily integrity cases reflect a gradual shift toward a more affirmative conception of bodily integrity under Article 8. The Court recognises that autonomy requires more than freedom from unwanted intervention: it requires a normative environment in which individuals retain meaningful control over decisions that affect their physical self. Legal frameworks that force individuals to undergo procedures, or that leave them in conditions of prolonged uncertainty, do not simply regulate bodily matters; they reshape the conditions under which personhood can be lived.

C. Religious and Cultural Expression

A third category generally covered by private autonomy is religious identity. Unlike claims rooted in sexual or gender identity, however, reliance on autonomy has rarely had a positive effect for individuals invoking their religious rights. Article 9 ECHR protects the freedom of thought, conscience, and religion. While the internal dimension of belief enjoys absolute protection, the external manifestation of belief – through dress, symbols, or practice – is subject to limitations under Article 9(2) of the Convention. The Court's approach to these cases has been marked by inconsistency, particularly in its use of the margin of appreciation and its deference to states' assessments of what constitutes democratic necessity.

In several judgments, restrictions on Muslim women's religious attire were upheld. The paradigmatic case is *Dahlab v. Switzerland* (2001)[64] where the Court found no violation of Article 9 in the prohibition against a primary school teacher wearing a hijab. The Court emphasized the state's right to religious neutrality and portrayed the headscarf as a "powerful external symbol" that could exert undue influence on impressionable children. It further claimed that wearing a hijab was difficult to

[62] *Schlumpf v. Switzerland*, App no. 29002/06 (ECtHR, 8 January 2009).

[63] *L v. Lithuania*, App no. 27527/03 (ECtHR, 11 September 2007).

[64] *Dahlab v. Switzerland*, App no. 42393/98 (ECtHR, 15 February 2001).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

reconcile with principles of gender equality and mutual respect, thus framing the restriction as promoting democratic values.[65]

This argumentative pattern persisted in *Leyla Şahin v. Turkey* (2005),[66] concerning a university student prohibited from wearing the hijab at Istanbul University. Here, the Court again invoked secularism, pluralism, and gender equality as the normative basis for restricting religious dress.[67] The headscarf was not simply viewed as a personal expression of belief but as a political symbol linked to fundamentalist movements allegedly threatening the secular state. The state's interest in safeguarding secularism and democratic values was thus deemed to outweigh the individual's right to manifest her religion.

However, this line of reasoning has been heavily criticized. In her dissenting opinion in Şahin, Judge Tulkens rejected the assumption that the headscarf inherently undermines gender equality or social cohesion. She pointed out that the Court had failed to demonstrate how the applicant's choice could exert coercive influence or what empirical supported its assessment. Moreover, she emphasized that the headscarf carries multiple meanings, including emancipatory interpretations, which the Court failed to consider.[68]

In *S.A.S. v. France* (2014),[69] the Court upheld a nationwide ban on full-face veiling, reasoning that it conflicted with the French conception of "living together" (vivre ensemble), an abstract constitutional principle invoked to justify restrictions on visibility and interaction in public space. Although the Court recognized that the ban could exclude and traumatize women and potentially infringe on pluralism, it deferred to the state's margin of appreciation, citing the lack of European consensus on the issue. The judgment has been widely criticised for subordinating concrete individual rights to abstract principles.[70] Critics argued that the reasoning did not in

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[65] *Dahlab v. Switzerland*, App no. 42393/98 (ECtHR, 15 February 2001).

[66] *Leyla Şahin v. Turkey*, App no. 44774/98 (ECtHR, 10 November 2005).

[67] *Leyla Şahin v. Turkey*, App no. 44774/98 (ECtHR, 10 November 2005) paras. 111, 114-116.

[68] Dissenting Opinion of Judge Tulkens in *Leyla Şahin v. Turkey*, App no. 44774/98 (ECtHR, 10 November 2005) paras. 3-5.

[69] *S.A.S. v. France,* App no 43835/11 (ECtHR, 01.07.2014).

[70] Lembke, 'Religionsfreiheit und Gleichberechtigung der Geschlechter' in Lembke (ed.) *Menschenrechte und Geschlecht* (Baden-Baden 2014) 188-215; Rödiger and Valentiner, '„living together – Zum Pluralismusbegriff des EGMR unter besonderer Berücksichtigung der Burka-Entscheidung' (2015) *AVR* 53, 360-389; Negishi, 'Fraternité – (dé-) naissante: Populist Potentialities of Human Rights' in Vidmar (ed.) *European Populism and Human Rights* (Leiden/Boston 2020) 215-255.

fact concern communicative capacity but rather targeted an ideology the majority associated with full-face veiling.[71] The assumption that face covering renders communication impossible has been challenged both empirically and conceptually. A fully veiled woman can, self-evidently, speak and interact. What seems to be at stake is not actual communicative ability, but the impression of communicative reluctance that is associated with the burqa. Yet as the dissenting judges point out, the Convention does not guarantee a right "not to be shocked or provoked by different models of cultural or religious identity, even those that are very distant from the traditional French and European lifestyle."[72]

In contrast, applications seeking protection for Christian symbols have enjoyed significantly greater success than those concerning Islamic symbols. In *Eweida and Others v. United Kingdom* (2013),[73] the Court found a violation of Article 9 in the case of a British Airways employee prohibited from wearing a cross to work. The judgment affirmed that the employer's policy lacked sufficient justification, and that the applicant's right to manifest her belief had been disproportionately restricted. While in Dahlab the hijab was described as a "powerful external symbol", the Court presented the cross as a "discreet"[74] symbol that did not harm corporate interests. Strikingly, this was one of the few judgements in which the Court explicitly acknowledged the democratic value of living in accordance with one's own identity and allowed this value to prevail over competing interests.[75]

The contrast between Islamic and Christian symbols becomes sharper in the Lautsi-litigation[76] on crucifixes in Italian public-school classrooms. Although the cases do not concern personal manifestations of belief, they are crucial for understanding how the Court evaluates the symbolic weight of religion in the public sphere. The Chamber had initially held that mandatory classroom crucifixes violated the parents'

[71] Joint Dissenting Opinion of Judges Nussberger and Jäderblom in *S.A.S. v. France,* App no. 43835/11 (ECtHR, 01.07.2014) para. 12.

[72] Joint Dissenting Opinion of Judges Nussberger and Jäderblom in *S.A.S. v. France,* App no. 43835/11 (ECtHR, 01.07.2014) para. 15.

[73] *Eweida and Others v. the United Kingdom,* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013).

[74] *Eweida and Others v. the United Kingdom,* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013) para. 94.

[75] *Eweida and Others v. the United Kingdom,* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013) para. 94.

[76] *Lautsi v. Italy* (Chamber) App no. 30814/06 (ECtHR, 3 November 2009); *Lautsi and Others v. Italy* (Grand Chamber) App no. 30814/06 (ECtHR 18 March 2011).

educational rights and children's religious freedom, relying on the familiar principles of neutrality, pluralistic curricula and the ban on indoctrination. It emphasised that the crucifix was a potent symbol, particularly in a country where one religion is dominant, and could exert pressure on non-believers or religious minorities.[77]

The Grand Chamber later reversed this finding and treated the crucifix as "an essentially passive symbol".[78] It reasoned that there was no evidence of actual influence on children and placed the burden of proof entirely on the applicants. This sits uneasily with the above mentioned Dahlab-case, where the Court had presumed the influence of a hijab without evidence, and imposed no comparable burden on the state. The two lines of reasoning cannot be reconciled on doctrinal grounds; they rest on different assumption about which symbols are capable of shaping identity and public meaning.

The larger problem is the Court's shifting understanding of neutrality.[79] At one moment, neutrality requires that states abstain from coercion; at another, it demands the absence of state preference; and at yet another it is equated with the removal of religious symbolism from the public sphere. The Court does not articulate when each model applies, nor does it confront the fact that these models pull in opposite directions. In the crucifix cases, the Grand Chamber accepted the idea that the enhanced visibility of the majority religion could be "balanced" by allowing individuals to wear minority religious attire. This collapses neutrality into tolerance: the state underscores its cultural alignment with the majority but compensates by permitting minorities to express themselves.

From the perspective of autonomy, this is decisive. Autonomy requires, that individuals organise their lives according to their convictions without having to justify their visibility against dominant norms. When Muslim women's attire is treated as inherently charged, while Christian symbols are normalised as culturally embedded and therefore harmless, autonomy protection becomes conditional on cultural familiarity. The jurisprudence constructs a hierarchy of acceptability: some religious expressions are seen as integral to the democratic landscape; others as potentially disruptive.

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[77] *Lautsi v. Italy* (Chamber) App no. 30814/06 (ECtHR, 3 November 2009) para. 50.

[78] *Lautsi v. Italy* (Chamber) App no. 30814/06 (ECtHR, 3 November 2009) para- 72.

[79] Ringelheim, 'State Religious Neutrality as a Common European Standard? Reappraising the European Court of Human Rights' Approach' (2017) *Oxford Journal of Law and Religion*, 6, 24-47; Ringelheim, 'Rights, religion and the public sphere' in Ungureanu/Zucca (Eds.) *Law, state and religion in the new Europe* (2012) 283-306; Pierek, 'State Neutrality and the Limits of Religious Symbolism' in Temperman (ed.) *The Lautsi Papers: Multidisciplinary Reflections* (Leiden/Boston 2012) 201-218.

As Marshall has observed, bans on religious clothing often reflect majority anxieties rather than minority threats.[80] They stigmatize difference and compel assimilation under the guise of democratic ideals. In doing so, such measures contradict the very logic of inclusive democracy, which depends on the equal standing of all agents regardless of their cultural or religious appearance. As Marshall puts it: "Such bans exclude, judge, disrespect, and thus do not safeguard her identity or personality rights."[81]

D. Interim Conclusion

Although the ECtHR has never provided a definitive definition of private autonomy, its case law reflects a growing sensitivity to autonomy as a guiding principle.[82] Particularly under Article 8 of the Convention, which protects the right to respect for private and family life, but also under Articles 9 and 14, the Court has increasingly interpreted the notion of "private life" in light of individual identity, dignity, and self-development.[83] This includes not only protection from state interference, but also a degree of positive obligation to ensure that individuals can lead lives in accordance with their convictions, beliefs, and self-conceptions.[84]

Initially, Article 8 was invoked primarily in relation to classic privacy interests – home searches, family life, correspondence. Over time, however, the Court expanded its interpretation, acknowledging that personal autonomy is at the heart of private life. In *Pretty v. United Kingdom* (2002), the Court explicitly stated that the notion of private life encompasses the right to make choices about one's own body and existence.[85] Although the applicant's claim for assisted suicide was ultimately rejected

[80] Marshall, 'S.A.S. v France: Burqa Bans and the Control or Empowerment of Identities' (2015) Human Rights Law Review 15/2, 388.

[81] Marshall, 'S.A.S. v France: Burqa Bans and the Control or Empowerment of Identities' (2015) Human Rights Law Review 15/2, 388.

[82] See Gerards, *General Principles of the European Convention on Human Rights* (Cambridge, 2023) 121-122.

[83] *Pretty v. the United Kingdom,* App. no 2346/02 (ECtHR, 29 April 2002) para. 61: "The concept of 'private life' is a broad term not susceptible to exhaustive definition. [...] It can sometimes embrace aspects of an individual's physical and social identity." See also Nettesheim, 'Artikel 8 EMRK' in Meyer-Ladewig, Nettesheim and von Raumer, *EMRK*, 5th edn. (Baden-Baden, 2023) para. 8.

[84] *Niemietz v. Germany,* App no. 13710/88 (ECtHR, 16 December 1992) para. 29; see also *Bensaid v. the United Kingdom*, App no. 44599/98 (ECtHR 6 February 2001) para. 47; see also Grabenwarter, Pabel, 'Rechte der Person' in Grabenwarter and Pabel, *Europäische Menschenrechtskonvention*, 7th edn. (München, 2021) para. 59-74.

[85] *Pretty v. the United Kingdom,* App no. 2346/02 (ECtHR, 29 April 2002) para. 61.

due to competing public interests, the recognition of self-determination as a relevant legal interest was a significant development.[86] Subsequent case law confirmed and refined this view.

This development can be traced particularly in the case law concerning sexual and gender identity. Initially, the Court only decriminalized intimacy between consenting homosexual adults in the privacy of their own homes.[87] Over time, however, homosexuality came to be recognized as an integral part of human personality and identity.[88] As a result, individuals were granted the right to be homosexual not only in private but also in public. Anti-discrimination laws[89] now protect this right, and the legal recognition of same-sex relationships[90] further affirms the entitlement of LGBTIQ+ individuals to their place (also) in the public sphere.

The concept of private autonomy as a core element of Article 8 was thus of central importance in the struggle for the rights of homosexual individuals. Pieter Cannoot is right in their assessment that such a right to autonomy, in the context of sexual orientation, must be understood as a right "to be free from oppressive socially constructed normative expectations regarding sexual identity",[91] or at very least, it inherently contains this potential.

By linking autonomy with the concepts of personality and identity, homosexuality was able to move beyond the narrow confines of the private – local – sphere and evolve into a genuine right to be homosexual. This must, in principle, apply to other sexual orientations and preferences as well – provided, of course, that consent and the capacity to consent are present. Autonomy challenges outdated notions of sexual morality and highlights the fact that human rights were originally conceived from a

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[86] *Pretty v. the United Kingdom,* App no. 2346/02 (ECtHR, 29 April 2002) para. 65.

[87] *Dudgeon v. the United Kingdom* App no 7525/76 (ECtHR, 22 October 1981); *Norris v. Ireland,* App no 10581/83 (ECtHR, 26 October 1989); *Modinos v. Cyprus* App no 15070/89 (ECtHR, 22 April 1993).

[88] See Marshall, *Personal Freedom* 118.

[89] Starting with *Lustig-Prean and Becket v. the United Kingdom,* App nos. 31417/96 and 32377/96 (ECtHR, 28 September 1999); *Smith and Grady v the United Kingdom,* App nos. 33985/96 and 33986/96.

[90] *Karner v. Austria,* App no. 40016/98 (ECtHR 24 July 2003); *Schalk and Kopf v. Austria,* App no. 30141/04 (ECtHR 24 June 2010); *Vallianatos v. Greece,* App nos. 29381/09 and 32684/09 (ECtHR, 07 November 2013).

[91] Cannoot, *The right to personal autonomy regarding sex (characteristics), gender (identity and/or expression) and sexual orientation: towards an inclusive legal system* (Dissertation, Ghent University 2019) 469.

heterosexual perspective. As Lembke notes, the law was based on an "ideal legal subject",[92] and through a rule-exception framework, identities that deviated from this norm were gradually brought into legal alignment with the "standard case". In contrast, the concept of autonomy enables an understanding of one's own "life plan" as the normative baseline.

However, the Court's reliance on autonomy is anything but consistent. This becomes especially apparent in the case-law on Islamic symbols. In these judgments the Court resorts to strained and, at times, conceptually incoherent reasoning that cannot be squared with its otherwise more considered amount of autonomy.

These cases illustrate the consequences of the Court's failure to take individual identity seriously in matters that lie close to the core of personality, as it effectively pushes the individuals concerned out of public space or forces individuals to conceal central aspects of their identity in public, without any convincing societal justification being offered. This produces a distorted public sphere and has direct implications for political autonomy, which is the focus of the following section.

IV. Political Autonomy in the ECHR Framework

Let us now turn to those fundamental rights that the ECtHR has so far emphasized as foundational to democracy. The Court treats political autonomy as inseparable from a cluster of rights that enable participation in the formation of collective will: the right to free elections under Article 3 of Protocol No. 1, the freedom of expression in Article 10, and the freedoms of assembly and association under Article 11. According to the Court, these rights must be interpreted in conjunction because they jointly secure the conditions under which individuals can exercise equal citizenship in a democratic society. Electoral freedom is not exhausted by the act of voting but presupposes the ability to form political opinions and to communicate them publicly. These concern, at very least, the aforementioned classic political rights: the general right to vote as guaranteed by Article 3 of Protocol No. 1, the freedoms of expression guaranteed by Article 10, and the freedoms of assembly and association set out in Article 11. The Court has thus held that electoral freedom, from the perspective of voters, encompasses two aspects: on the one hand the freedom to form political opinions, and on the other, the freedom to express them.[93]

[92] Lembke, 'Diversität als Rechtsbegriff' (2012) *Rechtswissenschaft 1*, 46 (64).

[93] *Russian Conservative Party of Entrepreneurs and Others v. Russia,* App nos. 55066/00 and 55638/00 (ECtHR, 11 January 2007) para. 71.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

According to the case law, free elections and freedom of expression form the foundation of any democracy. The freedoms of expression can be seen, in a way, as a precondition[94] for the right to vote. Taken together, Articles 10 and 11 of the ECHR and Art 3 of Protocol No. 1 aim, according to the Court, "to guarantee respect for pluralism of opinion in a democratic society through the exercise of civic and political freedoms."[95] Free elections, according to the Court's case law, are inconceivable without the "free circulation of political opinions and ideas."[96]

As already mentioned, the case law also reveals the conditions under which the democratic ideal underlying these rights can best be realized. When one asks, in the context of the ECHR, about these conditions, the following picture emerges: At the core of political autonomy lies the right to vote; however, the goal is not to produce arbitrary decisions, but rather ones that both reflect the diversity of individuals and are the result of deliberation over differing opinions. Moreover, majority decisions that arise from the exercise of voting rights are not regarded as an absolute: "Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail."[97] This becomes especially clear in cases where even the dissolution of parties – despite being democratically elected by a majority – has been declared compatible with the Convention if these parties fundamentally reject the principle of human equality. Such a conception of democracy thus clearly goes beyond purely procedural requirements.

The Court therefore emphasizes the special role of opinion-forming processes before (and after) elections. From the ECtHR's case law, one can, in my view, discern at least three interwoven and mutually dependent structural features of democratic public discourse, which must be safeguarded by member states in order to realize political autonomy: First, democratic society is characterized by the idea of equality. If this idea is taken seriously, it leads, second, to a pluralistic society. Third, pluralism and equality should be cultivated in a public process of opinion formation, in which anyone who wishes may participate, and which ideally culminates in a free and authentic electoral decision.

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[94] *Bowman v. the United Kingdom* App no 24839/94 (ECtHR, 19 February 1998) para. 42; Zysset, *The ECHR and Human Rights Theory* (Abingdon/Oxon 2017) para. 185.

[95] *Ždanoka v. Latvia* [GC] App no 58278/00 (ECtHR, 16 March 2006) para. 115 (a).

[96] *Şukran Aydın and Others v. Turkey*, App nos 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09 (ECtHR, 22 January 2013) para. 55.

[97] *Young, James and Webster/United Kingdom* App nos 7601/76 and 7806/77 (ECtHR, 13 August 1981) para. 63.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

A. Political Equality

Central to political autonomy within a democracy is the principle of equality.[98] Alongside freedom, it is one of the fundamental pillars of democracy. Yet equality is a much-used term, and at first glance, it can mean many things and support a wide range of social or political demands.[99]

In the context of the rights associated with political autonomy, however, it specifically refers to political equality of citizens – that is the equal value of political opinions and at least formally equal opportunity to participate in political decision-making and practice. The secrecy of the ballot historically served to protect against manipulation and coercion, but today it also represents the idea that one need not justify one's own voting decision.[100]

Let us recall the introductory reflections on political autonomy from earlier in this section: from a modern perspective, being subject to the law can only be justified if one can – at least indirectly – see oneself as an author of that law. If human rights were to be limited to private autonomy, Robert Alexy argues, then self-determination for the individual would only exist in the private sphere within a framework of entirely externally determined laws.[101] According to this view, every individual is best able to assess their own interests, and all individual interests are, under the principle of "one person, one vote", considered of equal value. Voting rights thus provide the means to help shape one's social environment according to these interests.[102] Additionally, Hans Kelsen's argument can be mentioned here: that the principle of majority rule represents the "relatively closest approximation to the idea of freedom," since it

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[98] ZB Kipke, *Jeder zählt* (Stuttgart, 2018); Allen, *Politische Gleichheit* (Berlin 2020); Schäfer, 'Der Verlust der politischen Gleichheit' in Armingeon (ed.) *FS Manfred Schmidt* (Wiesbaden 2013) 547-566; Wapler, 'Politische Gleichheit', in Baer, Lepsius, Schöberger, Waldhoff, Walter (eds.) *Jahrbuch des öffentlichen Rechts der Gegenwart 67* (Tübingen 2019) 428-455.

[99] See Pöschl, *Gleichheit vor dem Gesetz* (Wien, 2008); Altwicker, *Menschenrechtlicher Gleichheitsschutz* (Heidelberg 2010); Mangold, *Demokratische Inklusion durch Recht: Antidiskriminierungsrecht als Ermöglichungsbedingung der demokratischen Begegnung von Freien und Gleichen* (Munich 2021); Berka, 'Gleichheit als Rechtsprinzip in Europa' (2020) *ZöR* 74/4, 651-671; Davy, 'Wenn Gleichheit in Gefahr ist' (2019) *ZöR* 2019, 773-884; Wapler, 'Gleichheit angesichts von Vielfalt als Gegenstand des philosophischen und juristischen Diskurses' (2018), *VVDStRL* 78, 52-116; Augsberg, 'Gleichheit angesichts von Vielfalt als Gegenstand des philosophischen und juristischen Diskurses' (2018) *VVDStRL* 78, 8-51.

[100] Brettschneider, *Democratic Rights: The Substance of Self-Government* (Princeton 2010) 75; Lever, 'Privacy and Democracy: What the Secret Ballot Reveals' (2015) *Law, Culture and the Humanities* II/2, 164 (174-179).

[101] Alexy, 'Institutionalisierung' 244 (261).

[102] Ziegler, *Voting Rights of Refugees* (Cambridge 2017) 67-69.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

ensures that as few people as possible find their personal will in contradiction with the general will of the social order.[103]

However, equal voting rights alone are not sufficient to legitimize majority rule. Rather, equal access to other political fundamental rights must also be guaranteed. The strong protection of the political rights stems from their essential function in a democracy – a function that is, in turn, derived not least from the equal value of different positions. Unlike voting rights, these fundamental rights do not protect individuals from, at times, having to justify themselves publicly; however, their strong protection is meant to ensure that even unpopular viewpoints have a place in public debate. Democracy is, in this sense, substantively open without any claims to absolute truths.[104] Because of this openness, democracy also protects those who are supposedly "mistaken" – on equal terms. Political autonomy thus includes the right to "make mistakes" or to change one's opinion. One need not vote only for particularly virtuous or just politicians; rather, citizens are also allowed to choose morally questionable groups or those that explicitly represent only one's own interest – as long as they remain within constitutional bounds. Such decisions are to be respected by others.[105]

In the context of the ECHR, political equality thus implies not only equal voting rights but also the formal equivalence of political opinions and equal opportunities to have these opinions heard in the political process. Although the wording of Article 3 of Protocol No. 1 does not explicitly require universal suffrage, the Court generally only permits restrictions based on age,[106] citizenship,[107] or residence.[108] As result, large segments of the population remain regularly excluded from voting. However, the Court appears to regard these criteria as sufficiently "neutral" in this context. By contrast, blanket exclusions from the right to vote based on criminal convictions,[109] mental capacity,[110] or private bankruptcies[111] have gradually been dismantled by the

[103] Kelsen, *Vom Wesen und Wert der Demokratie* (Ditzingen, 2018) 9.

[104] Spiecker genannt Döhmann, 'Fragmentierungen – Kontexte der Demokratie: Parteien, Medien und Sozialstrukturen' (2018) *VVDStRL* 77, 9 (22).

[105] Lever, *On Privacy* (Abingdon/Oxon 2012) 26.

[106] *Hirst v. the United Kingdom (No. 2)* App no 74025/01 (ECtHR, 06 October 2005) 62.

[107] See Wagner, *Staatsangehörigkeit und Wahlrecht* (Baden-Baden, 2022).

[108] X v. Italy App no 8987/80 (European Commission of Humen Rights, 06 May 1981).

[109] *Hirst v. the United Kingdom (No. 2)* App no 74025/01 (ECtHR, 06 October 2005).

[110] *Alajos Kiss v. Hungary* App no 38832/06 (ECtHR, 20 May 2010) para. 42.

[111] *Campagnano v. Italy* App no 77955/01 (ECtHR, 23 March 2006) para. 48.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

Court. Despite remaining exclusions, O'Connell, in his 2020 analyses of the ECtHR's concept of democracy, identifies a Convention-based trend toward inclusion.[112]

B. Pluralism

At the heart of political autonomy and democracy in the sense of the Convention lies the principle of pluralism.[113] This is closely linked to the principle of political equality, as the equal protection of differing opinions, groups and parties naturally results in a certain degree of diversity. If political equality protects the equal status of citizens, then pluralism protects the diversity of their voices.

The central importance of pluralism for political autonomy is already evident from the historical context in which the ECHR emerged and from the Conventions' positioning against the notion of homogenous societies as the ideal of totalitarian systems. The ECHR and the ECtHR thus stand in particular opposition to models of democracy such as those found in the political philosophy of Carl Schmitt, according to whom the political strength of a democracy lies in its ability to eliminate and keep at bay what is foreign and unequal, what threatens its homogeneity.[114]

Heterogeneity – not homogeneity – is the hallmark of democratic society, and this principle permeates all political guarantees enshrined in the Convention. Pluralism in this sense is not merely the peaceful tolerance of divergent convictions but a structural principle. It presupposes that individuals and groups must be free to articulate their perspectives and that the resulting diversity of interests is not a flaw in democratic order but a condition of its vitality. In this vein, pluralism can be understood, following Gusy, as a form of social organisation grounded in individual and collective freedom, one that treats the multiplicity of viewpoints and aspirations as an essential and continually protected basis of democratic life.[115]

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[112] O'Connell, *Law, Democracy and the European Court of Human Rights* 268-280.

[113] For a foundational discussion in the context of the ECHR, see: Nieuwenhuis, 'The Concept of Pluralism in the case law of the ECtHR' (2007) *European Constitutional Law Review* 3/3, 367-384; Rödiger and Valentiner, 'living together' *AVR* 53, 360-389; Calo, 'Pluralism, Secularism and the European Court of Human Rights' (2010-2011) *Journal of Law and Religion* XXVI, 261-280; for general discussions of the concept of pluralism in its various forms, see: Witschen, *Ethischer Pluralismus* (Paderborn 2016); Reick, *Freiheit und Pluralismus* (Paderborn 2015); Schorkopf, *Staat und Diversität* (Leiden/Boston 2017); Özmen, 'Kelsen', 29-50; Heinze, *Hate Speech and Democratic Citizenship* (Oxford 2016) 37-70.

[114] Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Berlin, 1923) 14.

[115] Gusy, (2015) *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft*, 98/4, 452.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

The Court promotes pluralism at two interconnected levels. The first is political pluralism in the narrow sense, concerned with the multiplicity of political parties and viewpoints required for elections to be meaningful. The Court holds that elections are "inconceivable" without a plurality of political parties representing diverse societal interests,[116] a plurality of media presenting different opinions.[117] The principle of pluralism is especially prominent to the media landscape, requiring not only a variety of media outlets, but also the dissemination of diverse opinions through the media.

However, pluralism also sets a limit to this freedom: in *Refah Partisi v. Turkey*,[118] the Court prominently upheld the dissolution of a political party that advocated for a legal system based on Sharia law, holding that such an agenda was incompatible with the fundamental principles of the Convention, particularly the values of pluralism, equality, and democracy.[119] While the protection of political parties under Article 11 is strong, it is not absolute. Parties that aim to undermine pluralistic democracy or advocate for discriminatory or anti-democratic systems may be lawfully restricted.

In this way, the ECtHR underscores that pluralism is not only a requirement for democratic legitimacy but also a normative boundary: it both enables and limits political autonomy. Democratic systems must remain open to a wide variety of opinions and political movements, but not to those that seek to destroy the very foundations of that openness. Similarly, the Court has emphasized that other types of groups also play an important role, "including those protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness."[120]

This religious and cultural pluralism is primarily safeguarded by Articles 10 and 11 of the Convention, but also by the freedom of religion guaranteed under Article 9. In the context of Article 9, however, the connection between democracy, pluralism, and religious freedom becomes particularly meaningful when it comes to its collective dimension. The preservation of religious pluralism is especially relevant in cases

[116] *United Communist Party of Turkey v. Turkey*, App no. 19392/92 (ECtHR, 31 January 1998) para. 44.

[117] E.g: *Manole and Others v. Moldova*, App no. 13936/02 (ECtHR, 17 September 2009).

[118] *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] App nos 41340/98, 41342/98, 41343/98 and 41344/98 (ECtHR, 13 February 2003).

[119] *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC] App nos. 41340/98, 41342/98, 41343/98 and 41344/98 (ECtHR, 13 February 2003) paras. 120-128; critical towards this decision: Boyle, 'Human Rights, Religion and Democracy: The Refah Party Case' (2004) *Essex Human Rights Review* 1, 14.

[120] *Gorzelik and Others v. Poland* [GC] App no 44158/98 (ECtHR, 17 February 2004) para. 92.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

where freedom of religion functions as the *lex specialis* in relation to the freedom of association under Article 11. In such cases, the autonomy of religious groups must be protected and promoted against state interference or dissolution – for example, through the recognition of legal personality.

By emphasizing the relevance of such groups, the Court also underlines that people's political autonomy is shaped and realized through their group affiliations: "It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively."[121]

This "group pluralism" thus also contributes directly to the pluralism of public opinion and helps pave the way for it, as opinions and positions are formed collectively and communicated to the public through representatives. In this way, the Court constructs pluralism as both a condition and a boundary of political autonomy. It enables democratic participation by guaranteeing space for difference and limits democratic power by constraining attempts to erase difference. Pluralism as a principle does not merely tolerate diversity – it institutionalizes it as a component of democracy.

C. Public Formation of Opinion

Every pluralistic society must contend with the fact that, despite a multitude of diverse – and at times conflicting – actors, opinions, life plans, and conceptions of the good, it must still establish rules that are generally binding and apply to all. If, like the Court, one accepts the pluralism that results from equality as something positive, it follows that the common good within a society cannot be determined *a priori*. Rather, there exists a pluralism of conceptions of the common good, all of which must be treated as equally legitimate. A shared understanding of the common good must therefore be developed and continuously redefined through ongoing social exchange. Pluralism and equality therefore require a forum in which disagreement can be expressed, confronted, and evaluated.

Democracy, as understood by the Court, is not defined by pre-existing unity, but by continuous process of public communication through which temporary majorities are formed.[122] There is no "general will" in a Rousseauian waiting to be discovered

[121] *Gorzelik and Others v. Poland* [GC] App no 44158/98 (ECtHR, 17 February 2004) para. 92.

[122] Wapler, 'Politische Gleichheit', in Baer, Lepsius, Schöberger, Waldhoff, Walter (eds.) *Jahrbuch des öffentlichen Rechts der Gegenwart 67* (Tübingen 2019) 428 (436).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

outside this communicative process; political outcomes emerge through contestation, persuasion, and compromise.[123] Although the Court does not place as high demands on public discourse as, for example, those proposed by Habermas,[124] a certain level of integrity in public communication is nonetheless regarded as both a prerequisite and a boundary for political activity. This follows, first, from the particularly strong protection offered by Articles 10 and 11, which are only minimally subject to restrictions when exercised within the context of public debate. It also derives from the line of jurisprudence holding that democracy must tolerate even shocking or disturbing opinions, and that the public has a right to be exposed to a range of perspectives.[125]

This protection serves not primarily to honour speakers personally, but to preserve the integrity of the deliberative process by which temporary majorities are formed. Exceptions apply to particularly extreme forms of communication, in order to safeguard the integrity of discourse. Hate speech can therefore be excluded from protection – either at the level of the scope of rights[126] or at the stage of justification.[127] Recent case law also increasingly emphasizes the duty of member states to actively dismantle stereotypes.[128] This is based on the aforementioned "democratic vision of a society in which diversity is seen not as a threat, but as an enrichment."[129]

The communicative environment of democracy must therefore be capable of representing groups fairly, rather than reproducing stereotypes that silence or delegitimize them. The Court's jurisprudence concerning media and NGOs illustrates this logic clearly. Media are described as a "public watchdog",[130] and NGOs as a "social watchdog",[131] tasked with enabling public access to information necessary

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[123] Somek, *Rechtsphilosophie zur Einführung* (Hamburg, 2018) 179.

[124] Habermas, *Facts and Norms* 110-111.

[125] *Handyside v. the United Kingdom* App No 5493/72 (ECtHR, 7 December 1976) para. 49.

[126] E.g. *Glimmerveen and Hagenbeek v. Netherlands,* App nos. 8348/78 and 8406/78 (EComHR, 11 October 1979).

[127] *Lilliendahl v. Iceland,* App no. 29297/18(ECtHR, 12 May 2020).

[128] See Timmer, 'Toward an Anti-Stereotyping Approach for the European Court of Human Rights' (2007) *Human Rights Law Review 11,* 2571-2591.

[129] *Nachova and Others v. Bulgaria* [GC] App nos 43577/98 and 43579/98 (ECtHR, 6 July 2005) para. 145.

[130] *Goodwin v. United Kingdom* App no. 17488/90 (ECtHR, 27 March 1996) 39.

[131] *Társaság a Szabadságjogokért v. Hungary,* App no. 37374/05 (ECtHR, 14 April 2009) 36.

for authentic decision-making. These actors receive heightened protection because the maintain the very conditions under which political opinion can form.

Public opinion formation thus constitutes the third structural condition of political autonomy, as safeguarded by the ECHR: a communicative arena in which plural voices can dispute one another, without coercion, exclusion, or stigma. Here, equality and pluralism are not abstract ideals but operational principles. As Wapler argues, political equality presupposes a public sphere organized through diverse communicative spaces – such as independent media, associative platforms, and other arenas of expression – and also requires that individuals be free to establish such forums themselves.[132] The purpose of public deliberation, however, is not to arrive at definitive truths, but to produce decisions through contestation and persuasion. In this sense, Özmen emphasizes that democratic debate aims at forming temporary majorities rather than uncovering final values, and that its outcomes remain provisional. The result of political discourse is therefore not metaphysical insight but a contingent compromise, which derives its legitimacy from the equal opportunity of all citizens to participate in the process.[133]

D. No Pluralism through Private Autonomy?

From what has been said so far, it becomes clear – as Oppitz has pointed out – that the Court primarily envisions a pluralism of the "political" and the "public."[134] This refers to a diversity of voices and positions on matters of public relevance, as well as the representation of as many different social groups as possible in public spaces and public discourse.[135] These are to be actively protected by the states, as they are considered the "ultimate guarantors" of pluralism.[136] In the context of corporate religious freedom, the Court has also held that in cases of conflict between different religious groups, Member States must not respond by eliminating religious pluralism, but rather by promoting tolerance and peaceful coexistence among the groups.[137]

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[132] Wapler, 'Politische Gleichheit',428 (453).

[133] Özmen, 'Kelsen' 29 (46).

[134] Oppitz, Theorien der Meinungsfreiheit (Baden-Baden, 2018) 115.

[135] Oppitz, Meinungsfreiheit 115ff.

[136] *Informationsverein Lentia and Others v. Austria* App nos 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90 (ECtHR, 28 November 1993) para. 38.

[137] *Metropolitan Church of Bessarabia and Others v. Moldova* App no. 45701/99 (ECtHR, 13 December 2001) para. 116.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

At the same time, although the Court regularly underlines the importance of individual religious freedom for pluralism and democracy, this commitment often remains largely rhetorical. For example, as discussed above, membership in a religious or cultural group frequently entails obligations or needs that reach deep into the private sphere, such as wearing religious symbols or adopting specific ways of life, for example living in a caravan as part of a traveller community. Yet, as has been shown above, "pluralism" and "democracy" offer only limited support to applicants who invoke these needs as part of a claim to live in accordance with their convictions, that is, in the name of private autonomy.

Quite the contrary: by invoking tolerance and pluralism, Islamic head coverings have in some cases even been cast in an undemocratic light. The argument goes that women wearing the burqa, for instance, withdraw from democratic communication, and that the headscarf itself was difficult to reconcile with the principle of tolerance.[138] A ban on the burqa in public spaces, in line with the reasoning adopted in France, can thus be interpreted as a protection of pluralism, since the burqa is said to symbolize an anti-pluralist[139] and therefore anti-democratic attitude.[140]

This also applies to other social groups. Issues of sexual orientation and gender identity, for example, regularly give rise to the need for legal recognition of certain relationships or civil statuses, which in turn make an autonomous life possible. Here too, claims for recognition are typically framed as assertions of individual autonomy against the majority will. When recognition is granted, it is not presented as an

[138] *Dahlab v. Switzerland* App no 42393/98 (ECtHR, 15 February 2001); *Leyla Şahin v. Turkey* [GC], no 44774/98 (ECtHR, 10 November 2005) para. 111.

[139] „Furthermore, admittedly, as the applicant pointed out, by prohibiting everyone from wearing clothing designed to conceal the face in public places, the respondent State has to a certain extent restricted the reach of pluralism, since the ban prevents certain women from expressing their personality and their beliefs by wearing the full-face veil in public. However, for their part, the Government indicated that it was a question of responding to a practice that the State deemed incompatible, in French society, with the ground rules of social communication and more broadly the requirements of 'living together'. From that perspective, *the respondent State is seeking to protect a principle of interaction between individuals, which in its view is essential for the expression not only of pluralism*, but also of tolerance and broadmindedness without which there is no democratic society (see paragraph 128 above). It can thus be said that the question whether or not it should be permitted to wear the full-face veil in public places constitutes a choice of society." *S.A.S v. France* App no 43835/11 (ECtHR, 01 July 2014) para. 153.

[140] In addition to and in contrast with this line of argument, however, the Court emphasizes at another point in the judgment – within the discussion concerning the justification based on human dignity: "The Court is aware that the clothing in question is perceived as strange by many of those who observe it. It would point out, however, that it is the expression of a cultural identity which contributes to the pluralism that is inherent in democracy." *S.A.S. v. France* App no 43835/11 (ECtHR, 01 July 2014) para. 120.

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

instance of democratic pluralism, but as human rights prevailing over democratic decision-making. Arguments invoking "pluralism" and "democracy" rarely benefit the claimants.[141] The Court mentions these concepts, if at all, in contexts where marginalized groups are campaigning for rights in public discourse – for instance, when they are prevented from holding public assemblies.[142] However, these concepts are typically absent in cases where such groups directly claim rights – for example, the right to form a family. In contrast to the cases concerning religious head coverings, decisions in these areas are more often made in favour of the individual, yet they are framed as victories of the individual over the majority.

It is certainly correct to classify the issues at stake here – such as religion, culture, gender, and sexual orientation – as private matters in the sense that they are choices to be made by the individual; they are expressions of private autonomy. Less clear, however, is whether these matters should only be considered private, or whether they also concern political autonomy. Studies suggests – and this is regularly raised before the Court – that, for example, the institutional recognition of same-sex relationships correlates with and facilitates their social acceptance.[143] If the aim of a democratic society is a form of pluralism[144] based on tolerance, and if there is a direct link between the legal recognition of a way of life and its societal acceptance, then such recognition should arguably also be seen as in the interest of democratic society itself.

Following Özmen, pluralism can be described as a normative principle of democracy because individualism and pluralism go hand in hand. When people are free to pursue what they regard as meaningful or valuable in life, they inevitably diverge in interests, beliefs and ways of living. These differences are not a threat that needs to be managed but an expected outcome of equal freedom. From this perspective, pluralism is not an accessory to democracy but a structural result of individual autonomy.[145] Building on this, and in the context of ECtHR jurisprudence, one can ask whether democratic pluralism truly arises only through engagement in associations, or whether the recognition of private life choices already contributes to democratic pluralism. Must a person who identifies their gender as non-binary

[141] Pluralism was invoked, for example, in *Oliari and Others v. Italy* App nos. 18766/11 and 36030/11 (ECtHR 21 July 2015) para. 121, but was not further addressed by the Court.

[142] *Identoba and Others v. Georgia*, App no. 73235 (ECtHR, 12 May 2015) para. 93.

[143] *Oliari and Others v. Italy* App nos 18766/11 and 36030/11 (ECtHR, 21 July 2015) para. 113.

[144] In this context, the Court regularly refers first to the triad of 'pluralism, tolerance, and broadmindedness', but subsequently focuses primarily on the concept of pluralism. Cf. Logemann, *Die Grenzen der Menschenrechte in demokratischen Gesellschaften* (Baden-Baden 2004) 291f.

[145] Özmen, 'Kelsen' 29 (32).

University of Vienna Law Review, Vol. 10 No 1 (2026), pp. 1-37, https://doi.org/10.25365/vlr-2026-10-1-1.

participate in a demonstration against the existing gender order in order to make a societal contribution, or is the change of legal gender status, choice of clothing, public appearance, use of non-binary pronouns – or even just self-identification – sufficient? Doesn't a narrowing of pluralism to the realm of public discourse also risk creating a vicious cycle – one in which those whose core identities are not recognized may be unable or unwilling to enter the public arena and participate in public debate?

Human diversity is a social fact, and pluralism can be described as its political and legal recognition and promotion.[146] Within the ECHR framework, this diversity is not a nuisance to be overcome, but a foundational element of democracy. Pluralism, then, is not merely a *result* of political autonomy but also one of its conditions.[147] If this is accepted, then the legal and social suppression of private diversity is not only a problem for the individuals affected, but a democratic problem – and thus a challenge for society as a whole. So far, the Court has only recognized this in isolated cases concerning religious and cultural pluralism. In *Gorzelik et al. v. Poland*, the Court, referencing the Framework Convention for the Protection of National Minorities, stated that "a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, *but also create appropriate conditions enabling them to express, preserve and develop this identity*."[148]

Similarly, in *Eweida et al. v. United Kingdom*, the Court criticized a workplace policy that prevented an employee from wearing a Christian cross around her neck, in part because "a healthy democratic society needs to tolerate and sustain pluralism and diversity."[149] In this sense, pluralism is indeed linked to the individual – not just the group. Such an understanding of pluralism goes beyond a merely pluralistic public sphere and calls for the empowerment of individual – private – identities as the foundation of a pluralistic public sphere. However, such explicit formulations remain in the minority and rarely prove decisive in rulings in favor of the affected individuals.

[146] Özmen, 'Kelsen' 29 (33); Schorkopf, *Diversität* 28.

[147] See also Rödiger/Valentiner, (2015) AVR 53 (362), who describe pluralism as both the 'foundation and consequence of human rights guarantees.'

[148] *Gorzelik and Others v. Poland* App no 44158/98 (ECtHR, 17.02.2004) para. 93 (emphasis added by the author).

[149] *Eweida and Others v. the United Kingdom* App nos 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR, 15 January 2013) para. 94.

V. Political Autonomy and the Democratic Implications of Identity Protection – A Concluding Synthesis

Seen in its full architecture, the Convention protects democracy not merely by guaranteeing electoral rights, but by securing the conditions under which individuals can take part in collective self-government as equals. These conditions depend on the ability of individuals to appear in public as who they are, without having to negotiate or defend their basic identity at every step. Private autonomy is, in this sense, a prerequisite of political autonomy.

The Court's case law illustrates how restrictions on private autonomy translate into structural barriers to democratic participation. When the legal system refuses to recognise a person's gender identity, when religious attire excludes individuals from universities, public employment or representative institutions, or when discriminatory stereotypes remain unchallenged in public discourse, the consequences reach beyond the private sphere. These practices do not merely limit self-expression; they undermine the individual's capacity to occupy the public space as a full political agent. Autonomy related disadvantages thus can cascade into political inequality: those whose identities are not legally or socially recognised become less visible, less heard, and less able to influence public decisions.

If member states are, as the Court repeatedly states, "ultimate guarantor[s] of pluralism",[150] their responsibility cannot be confined to maintaining a marketplace of political ideas once individuals have entered it. It also extends to securing the preconditions that allow individuals to participate in that marketplace at all. Protecting private autonomy is therefore also a democratic requirement: the state must ensure that everyone can access the symbolic and institutional arenas in which collective self-rule is exercised.

Private autonomy should therefore not only appear in scattered case law under Articles 8, 9 and 14 ECHR, as it forms a normative backbone that connects identity, dignity, visibility and political participation. To take autonomy seriously means recognising that restrictions on identity, bodily integrity, religious practice or intimate relationships do not only concern the private sphere. They shape who is able to participate in democratic life on equal terms.

A coherent autonomy-based reading of the Convention therefore requires heightened scrutiny where interferences affect the ability to act and appear as an equal in public; a clear distinction between autonomy-relevant claims and mere preferences; and an understanding of positive obligations that reflects the

[150] *Sinan Isik v. Turkey*, App no. 21924/05 (ECtHR, 02.02.2010) para. 45.

participatory harms caused by exclusions or stigma. Such an approach strengthens the Convention's self-understanding as a democratic instrument: human rights are not limits to democracy but conditions of its inclusive practice.

Autonomy, understood in this integrated way, is both a normative foundation and a political goal of the Convention system. It links the protection of the individual with the democratic aspirations of the polity. Without private autonomy, the promise of political autonomy risks becoming circular: democracy invites everyone to participate, yet only those can participate who are already socially acknowledged as legitimate voices. Restricting the autonomous formation of private identity, then, is not merely a violation of personal freedom but narrows the democratic space itself.

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