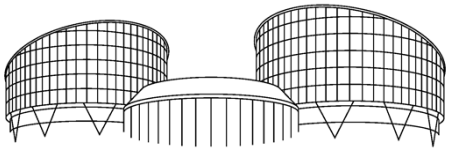

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

ADVISORY OPINION

as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement

Requested by
the *Conseil d'État* of Belgium

(Request no. P16-2023-001)

STRASBOURG

14 December 2023

This opinion is final. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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The European Court of Human Rights, sitting as a Grand Chamber composed of:

Siofra O'Leary, *President*
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Branko Lubarda,
Yonko Grozev,
Latif Hüseynov,
Jovan Ilievski,
Maria Elósegui,
Ioannis Ktistakis,
Andreas Zünd,
Frédéric Krenc,
Diana Sârcu,
Oddný Mjöll Arnardóttir,
Anne Louise Bormann, *judges,*

and of Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 18 October 2023,

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

PROCEDURE

1. By a letter of 4 April 2023 to the Registrar of the European Court of Human Rights ("the Court"), the Conseil d'État of Belgium submitted a request under Article 1 of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("Protocol No. 16" and "the Convention"), to give an advisory opinion on the question set out at paragraph 10 below.

2. That letter was received in the Registry on 13 April 2023 and the request was considered by the Court to have been formally lodged on that date.

3. On 10 May 2023 the panel of five judges of the Grand Chamber of the Court, composed in accordance with Article 2 § 3 of Protocol No. 16 and Rule 93 § 1 of the Rules of Court, decided to accept the request.

4. The composition of the Grand Chamber was determined on 22 May 2023 in accordance with Rules 24 § 2 (g) and 94 § 1.

5. By a letter of 23 May 2023 the requesting court was invited to provide any further information no later than 17 June 2023 (Rule 94 § 2). By another letter of 23 May 2023, the parties to the domestic proceedings were invited to submit written observations to the Court within a time-limit of 23 June 2023 (Article 3 of Protocol No. 16 and Rule 94 § 3). Within that time-limit,

further information from the requesting court and the written observations of the parties to the domestic proceedings were received in the Court's Registry.

6. By a letter of 17 May 2023 the Belgian Government informed the Court of their wish to exercise their right of intervention (Article 3 of Protocol No. 16 and Rule 44). They subsequently explained that they did not have any further information to submit in addition to that already provided to the Court by the Belgian State in its capacity as respondent in the domestic proceedings (see paragraph 5 above).

7. The Council of Europe Commissioner for Human Rights did not exercise her right to submit written comments (Article 3 of Protocol No. 16).

8. The written observations of the parties to the domestic proceedings were transmitted to the Conseil d'État, which did not submit any comments on them (Rule 94 § 6).

9. After the close of the written procedure, the President of the Grand Chamber decided that no oral hearing should be held (Rule 94 § 5).

THE QUESTION ASKED

10. The question asked in the request for an advisory opinion was worded as follows:

> "Does the mere fact of being close to or belonging to a religious movement that, in view of its characteristics, is considered by the competent administrative authority to represent a threat to the country in the medium to long term, constitute a sufficient ground, in the light of Article 9 § 2 (right to freedom of thought, conscience and religion) of the Convention, for taking an unfavourable measure against an individual, such as a ban on employment as a security guard?"

THE BACKGROUND AND DOMESTIC PROCEEDINGS GIVING RISE TO THE REQUEST FOR AN ADVISORY OPINION

11. The request arose in the context of judicial proceedings pending in the *Conseil d'État* concerning an application for the suspension and setting-aside of a decision of the Minister of the Interior to withdraw, from an individual considered by the Belgian State Security Service (*Sûreté de l'État*) to be a supporter of the "scientific" Salafist ideology, an identification card entitling him to perform duties ensuring the security of the Belgian railway infrastructure and of its users, and to refuse to issue him with a second card for employment as a security guard.

I. THE BACKGROUND TO THE REQUEST

12. In order to be employed as a security guard or officer (*agent de gardiennage* or *agent de sécurité*) in Belgium, it is necessary to obtain an identification card, issued by the Minister of the Interior or the representative thereof (see paragraphs 49-56 below).

13. Between 2010 and 2019 S.B., a Belgian national living in Molenbeek-Saint-Jean (Belgium), was employed by G4S, a private company specialising in security services. Among other duties he was assigned to guard buildings of the European Commission for which he had obtained special authorisation ("NATO clearance"). In that capacity he performed reception and patrol duties, including: enforcing access control, checking in visitors, searching bags, monitoring labourers in sensitive areas, carrying confidential mail and patrolling the premises to prevent intrusion. He was also assigned as control-room operator to handle the alarm system, oversee mobile teams on the site, monitor CCTV surveillance, open and close entrances remotely and set up additional security arrangements for VIP visits.

14. Wishing to change job, S.B. applied at the end of 2018 to the company Securail, which was responsible for the security of the Belgian railway infrastructure and its users. He was employed as a security officer on an operator's post in the control room located at Bruxelles-Midi railway station. The duties assigned to any operator in the control room – those he was exercising and is still exercising to date – include in particular the handling of telephone calls and security alerts, reacting to incoming alarms, executing CCTV surveillance and alerting emergency services according to the established protocol. While his line manager was on a long-term absence, S.B. was also asked to take over that manager's task of coordinating with other services responsible for security and safety, ensure completion of work orders in connection with the various technologies deployed, coach other operators, if necessary create new instructions and procedures and have them applied, and ensure the follow-up of information and requests from other security-related services.

15. In order to perform these various tasks, S.B. holds an identification card which was issued by the Minister of the Interior at the request of his employer. The card entitles him to continue working as a security officer. It is still valid to date and will expire on 18 June 2024.

16. S.B. had no criminal record on 21 February 2019, the date on which the Federal Public Service issued him with the relevant certificate which he needed to follow a security training course. In the same year his former employer, the company G4S, proposed that, in addition to working for Securail, he could be employed by its subsidiary G4S Event Security to handle the security of major events. This work would mainly have involved monitoring access to various events, managing the flow of visitors, accompanying VIPs and supervising other security officers under his

responsibility. The recruitment of S.B. to that post required the potential employer to obtain for him a second identification card that was specific to the relevant type of work.

17. On 2 May 2019 G4S submitted an application for that purpose to the Ministry of the Interior. The Ministry's services began a security investigation into S.B. and in that context asked the State Security Service, the Belgian civilian intelligence service, for information on him.

18. On 30 March 2020 the State Security Service informed the Ministry of the Interior that S.B. was known to the intelligence services on account of his contacts with several individuals of the scientific Salafist orientation, and sent the following assessment:

> "According to our assessment [S.B.] is a supporter of this ideology. Supported by a majority of Salafists, the 'scientific' branch considers preaching to be the main instrument for spreading its ideology, and eschews political intervention and violence as means of action. Most of the proselytising carried out within scientific Salafism therefore takes the form of teaching activities, the production of teaching aids about Islam or the dissemination of sermons."

19. On 8 March 2021, on the basis of an investigation report drawn up after the relevant enquiries had been made, the Security Conditions Investigation Board found that S.B. failed to satisfy the statutory profile for employment as a security guard and suggested that the Ministry of the Interior initiate a procedure for the purpose of refusing to issue him with a second identification card.

20. On 28 April 2021 the Ministry of the Interior informed S.B. of the Investigation Board's opinion and of his right to consult his administrative file, to receive a copy and to make submissions in his defence.

21. On 17 May 2021 counsel for S.B. consulted the administrative file and, on 28 May 2021, submitted arguments in his client's defence.

22. On 6 July 2021 the Ministry summoned S.B. to an interview.

23. The interview took place on 16 August 2021. According to the minutes, S.B. stated, among other things, that he was a practising Muslim, explaining that he sometimes "transmitted messages about Islam in a private context, for example to friends or family", copying and pasting the messages for them using text messaging or WhatsApp, that he did "not claim allegiance to a movement or particular ideology, apart from Islam", that he had not "had problems with the police or other administrative authorities", that if he had "encountered persons with links to extremist or terrorist circles, it [had] been coincidental" and that he "considered, on the contrary, that nothing [could be] resolved through violence".

24. In a decision of 15 October 2021 ("the impugned decision"), the Ministry of the Interior decided to withdraw S.B.'s identification card that had been issued to the security company Securail and refused to issue the security guard identification card sought by the company G4S Event Security.

Referring to the opinion of the State Security Service dated 30 March 2020 (see paragraph 18 above), the Ministry gave the following reasons:

> "In the light of the foregoing, it should be observed that scientific Salafism represents a threat to our model of society and to our country. Any security guard or officer must display conduct that is respectful of the fundamental rights of his or her fellow citizens and must respect democratic values. In the present case, on the basis of the State Security Service's assessment finding that you are a supporter of the scientific Salafist ideology and that you have contacts with a number of individuals of this Salafist orientation, I consider that, through your conduct and in particular your form of proselytising – which you acknowledged during your interview –, you are undermining the State's basic democratic values.
>
> Even though you have stated that you reject any violence in the name of Islam, the State Security Service has nevertheless indicated that you are a supporter of an ideology which, in particular, questions the legitimacy of Belgian law, advocates community sectarianism, fosters a backward view of the role of women and takes positions which threaten the fundamental rights and freedoms of citizens by a reactionary vision seeking to rid Islam of all its non-Islamic evolutions and influences.
>
> ...
>
> On the basis of all of the above-mentioned elements, I consider that the fact that you are the supporter of an ideology – scientific Salafism – belonging to the Salafist branch is likely to be incompatible with the fundamental values of our law-governed State and with the fundamental rights of its citizens. This also indicates a lack of integrity and is capable of impairing the trust that needs to be placed in any security guard or officer.
>
> Consequently, I am of the view that the above-mentioned factors constitute a counter-indication to the profile expected of a security guard or officer, as laid down by section 64 of the Private and Individual Security Act of 2 October 2017 and that therefore you do not meet the condition prescribed in section 61 (6°) of that Act."

25. The Ministry of the Interior further based the impugned decision on extracts from a brochure on Salafism, which was available on the State Security Service's website, where the authority explained that scientific Salafism and political Salafism posed a threat for the following reasons:

> "In the medium to long term, scientific Salafism and political Salafism also pose a threat to our country.
>
> First, an intolerant version of religion, refusal to recognise the legitimacy of Belgian law (in relation to Sharia law) or community sectarianism clearly represent a danger for the democratic and constitutional order. Such a sectarian application of religion could lead to the emergence of truly parallel societies where the authority of a State and of a democratic system would no longer apply.
>
> Secondly, sexual inequality, a backward view of the role of women and the position *vis-à-vis* religious freedom may in the long run seriously threaten fundamental rights and freedoms. Examples include repeated calls to hatred of Jews or of Western values, an obligation for women to be invisible in public places, prohibition of mixing and the resulting quasi-apartheid of the sexes, or threats proffered against opponents and against critics of Islam (genuine or not), thereby seriously impugning freedom of expression.
>
> Lastly, since Salafists claim to speak for all Muslims they tend to make generalisations, thus triggering heated reactions among far-right groups toward the Muslim population as a whole. This has the effect of polarising society and undermining

the principle of 'living together' (*le vivre-ensemble*). It should further be noted that the main victims of Salafists are often other Muslims."

26. On 18 June 2022 S.B. sent the State Security Service a request for access to the administrative documents in his file and also lodged a complaint with the Standing Committee for the Supervision of Intelligence and Security Services. The State Security Service rejected the request on the grounds that all the requested documents were classified pursuant to the Classification and Security Clearances, Certificates and Assessments Act of 11 December 1998.

27. On 31 August 2022, S.B. asked the State Security Service to reconsider the refusal but was unsuccessful.

II. THE DOMESTIC PROCEEDINGS

28. By an application lodged in the *Conseil d'État* on 25 October 2021 against the Belgian State (represented by the Ministry of the Interior), S.B. sought the setting-aside of the decision taken by the Minister on 15 October 2021 to withdraw his identification card as security officer and to refuse to issue him with a second identification card for employment as a security guard (see paragraph 24 above).

29. Even though, as a general rule, the Court does not reproduce the written observations or other documents submitted by the various participants in its advisory proceedings, in the context of the request at issue it nevertheless finds it useful, in order to ensure a better understanding of the criteria that it will set out in its response, to give an overview, in the following paragraphs, of the main arguments of the parties in the proceedings before the *Conseil d'État*, as the question which has given rise to the request emanates from the factual and legal points discussed in those proceedings.

A. Arguments of the parties in the domestic proceedings

30. Relying on Articles 9 and 14 of the Convention, the applicant in the domestic proceedings stated that his Muslim faith had been known to his employers and that it had never posed the slightest difficulty in the performance of his work for G4S and Securail, which had employed him in succession. He argued that the mere fact of having exchanges about religion with his relatives, in a private context, fell within the private practice of worship and did not constitute a "form of proselytising". The Minister's decision of 15 October 2021 had in his view been the result of a manifest error of judgment.

31. He further submitted that he had never shown any lack of integrity in his work, had never encountered any difficulties with his colleagues, his managers or members of the public for whose security he was responsible, and had never shown any lack of respect for fundamental rights or democratic values. He submitted that the opposite party had not produced any actual

evidence to show that his alleged ideology had had any impact on his professional integrity or on his fulfilment of the requisite profile, as laid down in section 64 of the Private and Individual Security Act of 2 October 2017 (see paragraph 54 below). He added that, as he was from Molenbeek-Saint-Jean in Belgium, where he still lived and where he knew many people, it was possible that he had unwittingly crossed paths with people involved in the dissemination of scientific Salafism, without necessarily sharing their ideas. In his view, his social, ethnic and religious background could not be seen as incompatible with the statutory profile.

32. With regard to his procedural rights, he alleged in particular that he did not know exactly what the concept of "scientific Salafism" was supposed to cover and said that no specific question had been put to him in that regard at his interview in order to enable him to defend himself effectively. He pointed out that the questions put to him on that occasion had remained fairly broad as to his religious practice, without referring specifically to his supposed beliefs or to whether or not they were compatible with his duty of integrity or with respect for democratic values and the fundamental rights of other citizens.

33. He also stressed that the decision to withdraw his identification card would deprive him of any possibility of employment in the relevant field and would bring an end to a professional career for which he had specifically trained and from which he derived his income. He noted in that connection that the impugned measure had the effect of immediately depriving him of the possibility of continuing to work in his current post and that his chances of finding another job with an equivalent salary were minimal, since he would not be able to rely on the experience he had acquired over more than ten years in the field of private security. In addition, his dependent wife and two minor children relied on his income, as he was the only breadwinner in the household. Even if he were able to obtain a substitute form of income (i.e. unemployment benefit or the living allowance, *revenu d'intégration sociale*), the immediate implementation of the impugned decision was capable of placing him and his family in a situation of financial insecurity overnight. He also submitted that the reasons on which the decision was based, namely that he did not fit the security profile because he was a supporter of scientific Salafism, were likely to seriously damage his honour and reputation, especially in the professional environment in which he had worked for more than ten years. He argued that the seriousness of the damage was sufficient to justify a suspension of the impugned decision.

34. In observations accompanying the administrative file concerning the applicant and sent to the *Conseil d'État*, the Minister of the Interior stressed that, as an administrative public-order authority, she was bound by a general duty of care on the basis of Articles 1382 and 1383 of the Civil Code, and that this obligation required her to exercise her administrative policing powers, including those conferred by legislation in matters of private security,

and, in particular, to take the necessary measures to prevent or limit risks and to anticipate foreseeable negative consequences. She argued that in the case at issue she had been able, without committing a manifest error of judgment, to infer from the various elements set out in the impugned decision that the applicant's conduct was incompatible with the requisite profile of a security guard, whose characteristics were: respect for the rights of citizens, integrity, ability to deal with aggressive behaviour on the part of third parties and the absence of suspected links with criminality, and also the requirements of loyalty, discretion, respect for democratic values and the absence of any risk to national security or public order.

35. Referring to the case-law of the Court, which, in her view, did not rule out the possibility for countries to take restrictive measures against members of religious movements promoting an ideology that was contrary to democratic principles, and relying on the explanations provided by the State Security Service, she emphasised that Salafism was an ultra-orthodox, reactionary and intolerant branch and that "in the medium to long term, scientific Salafism and political Salafism also represent[ed] a threat" to the country.

36. The Minister further observed that the applicant in the domestic proceedings had not produced any documents concerning the financial situation of his household or the financial constraints that he and his family would have to face as a result of the impugned decision. The few elements relied on in support of his assertions were, in her view, insufficient for an assessment of his overall financial situation, particularly at a level of extreme urgency. Given that the impugned decision, though not a sanction, constituted a serious measure against him, the Minister indicated that the principle *audi alteram partem*, which required that he be able to defend himself, was nevertheless applicable. In the present case, however, that principle had been upheld by the possibility for the applicant to consult his administrative file, to submit written pleadings in his defence and to give oral evidence. According to the Minister, nothing had prevented the applicant from enquiring about the concept of "scientific Salafism" if, as he alleged, he did not know what it represented, relevant documentation being available on the State Security Service's website. Lastly, the Minister pointed out that the applicant had had one month to prepare for his interview and that he could have requested an extension of the time-limit for lodging his written submissions or for being interviewed if he had considered that the time allowed was insufficient.

B. Judgment of the *Conseil d'État* in the "extreme urgency" suspension proceedings

37. In the "extreme urgency" suspension proceedings, the *auditeur* at the *Conseil d'État* gave the following opinion:

"... in the absence of any more detailed explanation by the State Security Service of the factors which led it to consider that the applicant was a supporter of scientific Salafism and, in addition, in view of the intelligence services' failure to submit documents in support of their opinion of 30 March 2020 following my investigative measure of 27 October, the *Conseil d'État* is not in a position to verify that assertion in practice.

In order to carry out its review, the *Conseil d'État* can assess the applicant's situation only in the light of the tangible and undisputed factors brought to its attention, namely the fact that the applicant is a practising Muslim who may well, having regard to his surrounding community, have come into contact with individuals adhering to the religious branch in question. These verifiable and undisputed facts by themselves do not suffice to prompt the conclusion that the applicant is necessarily a supporter of scientific Salafism himself. The above-mentioned factors, which have to be taken into account, do not in themselves justify the withdrawal of the applicant's Securail identification card or the refusal of his G4S Event Security identification card.

This amounts to an infringement of the principle of equality and of freedom of religion, as guaranteed by the provisions referred to in the ground of appeal. It has not been shown that the intelligence services were able, without committing a manifest error of assessment, to conclude that the applicant was a supporter of scientific Salafism, such that the impugned decision, which is based on that assessment, is itself flawed."

38. In judgment no. 252.020 of 29 October 2021, adopted in the "extreme urgency" suspension proceedings, the *Conseil d'État* ordered, in accordance with the opinion of the *auditeur*, the immediate suspension of the Minister of the Interior's decision of 15 October 2021 (see paragraph 24 above), by way of interim relief. Citing Article 19 of the Belgian Constitution and Article 9 of the Convention, which, in its view, constituted an inseparable whole, the *Conseil d'État* gave the following reasons for its judgment:

"...

In order to be compatible with freedom of religion, an interference must satisfy the conditions laid down in Article 9, paragraph 2, of the Convention, pursuant to which the interference must be prescribed by law, must pursue one or more of the aims referred to in that Article and must be necessary in a democratic society, which presupposes that it meets a pressing social need and that it is proportionate to the aims pursued.

In its judgment of 2 February 2016, *Sodan v. Turkey*, the European Court of Human Rights found as follows in respect of that Article:

'... 54. The mere fact that the applicant was actually or supposedly close to or belonged to a religious movement cannot in itself constitute a sufficient ground for taking an unfavourable measure against him, since it has not been clearly demonstrated either that the applicant was not acting impartially or was receiving instructions from members of that movement, or that the movement in question represented a genuine threat to national security'.

In the present case, it should be observed that the applicant's actual or supposed proximity or adherence to a religious movement is based solely on an 'assessment' made by the State Security Service on the basis of evidence which is not known to either the parties or to the *Conseil d'État* and whose relevance and probative value are therefore not established beyond reasonable doubt at this stage of the proceedings.

Similarly, the nature and frequency of the applicant's alleged contacts with a number of followers of the scientific Salafist orientation also remain unknown.

During his interview, the applicant did not acknowledge that he was a member of such a movement, but merely that he was a practising Muslim. Even though, at that interview, he stated that he had on occasion 'transmitted messages about Islam in a private context, for example to friends or family, which I copy/paste for them via text messaging or WhatsApp', that does not necessarily mean that those messages, the content and recipients of which remain unknown, could be regarded as a form of proselytising that is typical of the scientific Salafist orientation.

The criticisms levelled at the applicant about challenging the legitimacy of Belgian law, community sectarianism, a backward view of the role of women and positions threatening the fundamental rights and freedoms of citizens are based only on a theoretical presentation of scientific Salafism. There is no evidence in the administrative file to establish the existence of specific, concrete facts attributable to the applicant showing that he would give preference to religious imperatives over strict adherence to the rule of law or that he would treat certain categories of people in a discriminatory manner on grounds linked to a Salafist vision of Islam. Consequently, it has not been sufficiently established that the applicant has lacked integrity or undermined either the fundamental values of the rule of law by which our State is governed or the fundamental rights of citizens.

Moreover, according to the State Security Service's analysis referred to in the reasoning of the impugned decision, scientific Salafism has the particular feature, compared with other forms of fundamentalism, of eschewing political involvement and violence as means of action ... That is why the analysis considers that this faction could pose a threat only in the medium to long term, but not in the immediate future. It follows that the applicant's actual or supposed adherence to this orientation, which he denies and which has not been established at this stage of the proceedings, could not in itself constitute sufficient evidence to conclude that the immediate withdrawal of the applicant's security guard card, and the refusal to issue a new one, are necessary on account of a risk he might pose to the internal or external security of the State or to public order. ..."

C. Judgment of the *Conseil d'État* in the proceedings on the application to set aside, requesting an advisory opinion from the Court

39. On 12 November 2021 the Minister of the Interior applied to the *Conseil d'État* for the resumption of the proceedings on the application to set aside the impugned decision.

40. On 14 March 2022 the applicant in the domestic proceedings filed supplementary pleadings in which he submitted that there was no reason for the *Conseil d'État* to depart from what it had held on an interim basis in its previous judgment (see paragraph 38 above). He argued that it had not been established that he had sent messages which could be regarded as a form of proselytising typical of the scientific Salafist orientation, that his administrative file contained no document from which it could be established that there were specific, concrete facts attributable to him which showed that he did not satisfy the security profile requirements, that the reference to a

theoretical presentation of scientific Salafism (see paragraph 25 above) was insufficient in itself to form the basis for the impugned decision, and that it had not been established that he had been lacking in integrity or had infringed the fundamental values of the rule of law or the fundamental rights of citizens. In any event, his actual or supposed adherence to scientific Salafism could not in itself be a sufficient basis for concluding that the immediate withdrawal of his security officer's card and the refusal to issue a new card as a security guard were necessary on account of a risk he allegedly posed to the internal or external security of the State or to public order.

41. On 27 April 2022 the *auditeur* dealing with the case before the *Conseil d'État* visited the premises of the State Security Service where he consulted the file classified as "secret" in the applicant's name and met the officials of the relevant department. In his report of 29 April 2022 the *auditeur* reported as follows:

> "It is clear from the consultation of this file and from the oral presentation of the material collected by the State Security Service that the applicant is indeed, contrary to what he alleges, and without reasonable doubt, a supporter of the scientific Salafist ideology and that he engages in certain activities in this context.
>
> The material on the basis of which I arrive at that conclusion cannot be subject to adversarial debate, since it is classified as 'secret', in accordance with the Classification and Security Clearances, Certificates and Assessments Act of 11 December 1998."

42. In the conclusion to his report, the *auditeur* proposed that the application to set aside be dismissed and, accordingly, that the previously granted suspension of the impugned decision be lifted, for the following reasons:

> "Following my investigative measure of 27 April 2022, it is proven that the applicant is indeed, without reasonable doubt, a supporter of the ideology of scientific Salafism and that he is taking an active part in this movement, contrary to what he claims. It follows that the above-cited reasoning of the judgment in *X*, no. 252.020 of 29 October 2021 ..., which was set out apparently at a time when it had not been physically possible to consult the file classified as secret, or to take evidence from the State Security Service, can no longer be upheld.
>
> The information obtained during the investigative measure of 27 April 2022, which confirms that the applicant is indeed a supporter of scientific Salafism and engages in certain activities in that context, also makes it possible to revisit the lessons to be drawn ... from the judgment ... The *Conseil d'État* must take account of the special prerogatives granted to persons who have been issued with identification cards by and under sections 89 *et seq.* of the Act of 2 October 2017, which allow for a restrictive approach by the administrative authority to the profile conditions set out in section 64 of that Act. This requirement of stringency corresponds, moreover, to the intention of the legislature, which, in the Act of 2 October 2017, added various characteristics to the existing profile.
>
> In the present case, the measures decided in the impugned decision, namely to withdraw and refuse security guard identification cards, were based on the applicant's adherence to the ideology of scientific Salafism and his proselytising activities in that context, which cannot be disputed beyond reasonable doubt. The applicant's links with

the scientific Salafist ideology and activities in that context are not limited, as he maintains, to mere contacts, as a consequence of his social environment, 'with individuals belonging to a certain religious branch, without his being aware of those people's religious beliefs and practices or sharing their ideas'. Furthermore, the letters of recommendation from the applicant's former and current superiors do not call into question his adherence to the scientific Salafist ideology or his activities linked to it. ...

The fact that the aforementioned threat to our country is foreseen 'in the medium to long term' does not have the effect of manifestly vitiating the assessment made by the authority which adopted the impugned decision. It is noteworthy in that regard that the legislature allowed the authority adopting the impugned decision to take into account the mere risk to the internal or external security of the State or to public order. As a result, the legal regime introduced by the Act of 2 October 2017 sought to prevent the occurrence of events that might call into question the requirements set out in section 61, first paragraph (6°), of the Act of 2 October 2017. It follows that the pursuit of activities in the context of scientific Salafism may be such as to justify, without arbitrariness, the impugned decision, even if it is not established that the systemic threat to Belgium is an immediate one. Accordingly, the authority which adopted the impugned decision was entitled to consider, without committing a manifest error of assessment or error of fact, that, in view of the applicant's adherence to the ideology of scientific Salafism and to the proselytising in which he engaged, he was undermining the fundamental democratic values of the State. Such a finding was sufficiently serious to justify, in a manner that was not manifestly unreasonable, the decision taken. It is not for the *Conseil d'État* to substitute itself for the authority which took the impugned decision by assessing, in its discretion, the interpretation to be given to the condition of a lack of risk for the internal or external security of the country or for public order, unless a manifest error of judgment can be found, no such error having been demonstrated in the present case.

The judgment in *Sodan v. Turkey* of 2 February 2016 of the European Court of Human Rights, as cited in the judgment ... no. 252.020 of 29 October 2021, can be transposed to the present case in so far as it provides theoretical guidance. It cannot, however, be applied without taking account of the specificities of the case at hand, bearing in mind that it is not the mere Muslim faith of the person concerned or his relatives which lies at the heart of the authority's assessment, but indeed the fact that he belongs to an extremist religious movement, which represents a threat to Belgium and its democratic values, together with his activism in that context.

Therefore the impugned decision has not entailed a disproportionate interference with the applicant's freedom of religion."

43. As regards the upholding of S.B.'s "procedural rights", the *auditeur* considered, in the context of the same report, that the applicant's complaints alleging a failure to respect those rights were ill-founded. The *auditeur* found that the information to the effect that the applicant was considered to be a supporter of scientific Salafism was clear from the letter sent to S.B. by the Minister of the Interior on 28 April 2021 (see paragraph 20 above), by which the administrative procedure with a view to the withdrawal or refusal of an identification card had been initiated; the applicant had therefore been in a position to set out his arguments in his defence pleadings in full knowledge of the accusation against him. The *auditeur* further noted that the principle *audi alteram partem*, which had given the applicant the possibility of

defending himself, did not require that he be specifically questioned on this point during his interview. As to the fact that the State Security Service's note on scientific Salafism had not been included in the administrative file disclosed to the applicant, he noted that this omission raised no problem since the note in question – reproduced in part in the grounds of the impugned decision – was a general information note, freely accessible on the internet, which did not contain any specific or direct assessment about the applicant in person, and therefore did not have to be included in the administrative file made available to him prior to his interview and to the filing of his pleadings. Moreover, the applicant had not alleged in the administrative proceedings that he was unable to understand the meaning to be given to scientific Salafism, and had even set out in his pleadings the reasons why he denied being a supporter of that ideology.

44. In his last set of observations, the applicant submitted that consultation by the *auditeur* at the *Conseil d'État* of the classified material gathered about him by the State Security Service could not lead to the invalidation of the judgment previously delivered by that court in the urgent proceedings (see paragraph 38 above). He argued that, since the material gathered by the *auditeur* during his investigation was classified, and thus not subject to any adversarial debate between the parties, the *Conseil d'État* bench examining his appeal should not have been "satisfied with the conclusions reached by the State Security Service as to his ideological adherence, even if the *auditeur* had been persuaded by it". In his view, the *Conseil d'État* should have been able to review the classification of that information and to give him access to at least the substance of the findings against him, so that he could understand the facts imputed to him personally. He added that he should be able to dispute and interpret those facts himself in order to ensure adversarial debate and an effective review by the *Conseil d'État* of the impugned decision.

45. In her last set of observations the Minister of the Interior observed that the "criteria" laid down by the Court in *Regner v. the Czech Republic* ([GC], no. 35289/11, 19 September 2017) were satisfied in the present case and that there had been no breach of the right to a fair trial or of the adversarial principle. Pointing out that both the *auditeur* and the members of the *Conseil d'État* had enjoyed a right of unrestricted access to all the classified documents on which the Security Service had based its opinion of 30 March 2020, the Minister stated that, although the *auditeur* had already availed himself of that possibility and had been able to consult the specific, comprehensive and detailed information concerning the applicant's conduct as gathered by the State Security Service, there was nothing to prevent the members of the *Conseil d'État* hearing the case from also consulting the material, should they so wish. She added that this would enable them to satisfy themselves that the information not subject to adversarial debate between the parties was substantiated and, accordingly, that the reasoning of

the impugned decision complied with the statutory provisions on the formal statement of reasons for administrative acts. The "active role of the administrative courts" thus made it possible, in the present case, to "compensate for a certain inequality between the parties to the proceedings".

46. At a public hearing on 14 March 2023 the *Conseil d'État* heard the lawyers appearing for the applicant and for the opposite party, and also the *auditeur* at the *Conseil d'État*, who presented his opinion.

47. In judgment no. 256.222 of 4 April 2023, the *Conseil d'État* decided that it was necessary: (1) to reopen the proceedings and (2) to request an opinion from the Court on the scope of Article 9 § 2 of the Convention, as interpreted and applied in the Court's case-law. It was in that context that the *Conseil d'État*, in paragraph 48 of its judgment, put to the Court the question referred to in paragraph 10 above. That judgment of the *Conseil d'État*, containing the request for the present advisory opinion, was based on the following grounds:

> "... In the view of the *Conseil d'État*, contrary to what the authority adopting the impugned decision stated, it is not apparent from the record of the interview that the applicant acknowledged on that occasion that he had engaged in conduct and, in particular, a form of proselytising that was typical of the scientific Salafist orientation, nor that had he acknowledged that he was a member of such a movement. There is nothing in the administrative file to show that any concrete and specific acts imputable to the applicant indicated that he would give preference to religious imperatives over strict adherence to the rule of law or that he would treat certain categories of people in a discriminatory manner on grounds relating to a Salafist vision of Islam.
>
> Even assuming, as the State Security Service has done in its assessment, that the applicant is indeed a supporter of that ideology and that he has been in contact with several individuals of that Salafist orientation, the question arises whether that factor alone is sufficient to justify the impugned decision in the light of Article 9 of the Convention.
>
> In its above-mentioned *Sodan v. Turkey* judgment, the [European Court of Human Rights] took the view that the mere fact of belonging to a religious movement was insufficient in itself to justify an unfavourable measure unless it had been clearly demonstrated that 'the movement in question represented a real threat to national security'.
>
> According to the State Security Service's analysis referred to in the reasoning of the impugned decision, scientific Salafism is defined as follows: 'This branch considers *dawa* preaching to be the main instrument for spreading its ideology, and eschews political intervention and violence as means of action. Most of the proselytising carried out within scientific Salafism therefore takes the form of teaching activities, the production of teaching aids about Islam or the dissemination of sermons.'
>
> Thus, the State Security Service considers that 'in the medium to long term, scientific Salafism and political Salafism also constitute a threat to our country' for the following reasons:
>
> 'First, an intolerant version of religion, refusal to recognise the legitimacy of Belgian law (in relation to Sharia law) or community sectarianism clearly represent a danger for the democratic and constitutional order. Such a sectarian application of religion could

lead to the emergence of truly parallel societies where the authority of a State and of a democratic system would no longer apply.

Secondly, sexual inequality, a backward view of the role of women and the position *vis-à-vis* religious freedom may in the long run seriously threaten fundamental rights and freedoms. ...

Lastly, since Salafists claim to speak for all Muslims they tend to make generalisations, thus triggering heated reactions among far-right groups toward the Muslim population as a whole. This has the effect of polarising society and undermining the principle of 'living together' (*le vivre-ensemble*). It should further be noted that the main victims of Salafists are often other Muslims.'

The applicant seeks, in the alternative, a preliminary ruling from the Constitutional Court if the *Conseil d'État* agrees with the interpretation that section 64 of the Act of 2 October 2017 allows the administrative authority to take account of a medium-term or long-term threat from a non-violent religious branch in order to establish the existence of risks for the State's internal or external security or for public order. It is for the court to interpret the legislative provisions applicable to the dispute. Before possibly endorsing the interpretation of the above-mentioned section 64 that is suggested in the question, the *Conseil d'État* finds it necessary to examine the scope of Article 9 § 2 of the Convention ..."

48. In delivering that judgment, the members of the Fifteenth Chamber of the *Conseil d'État* hearing the case relied on the applicant's administrative file as adduced by the Ministry of the Interior during the proceedings in the *Conseil d'État* and on the report of the *auditeur* (see paragraphs 18-25 and 41-43 above), without consulting, as the *auditeur* had done, the classified documents in the file compiled by the State Security Service.

D. Factual developments subsequent to the request for this advisory opinion

49. On 23 June 2023 the representative of the Belgian State in the proceedings before the requesting court informed the Court (see paragraph 5 above) that, according to the information that he had recently received from the State Security Service, S.B. had regularly posted, between 2017 and March 2023, Salafist content (in particular sermons by Salafist preachers) on Facebook; the State Security Service had found that the frequency of the postings had sometimes reached four per month and his account had over 4,000 "friends". In her observations in reply, S.B.'s representative in the proceedings before the requesting court challenged that new information, especially the fact that such conduct was imputable to S.B., and asked the Court to consider it with caution (ibid.).

50. In a letter of 14 July 2023, the Standing Committee for the Supervision of Intelligence and Security Services informed S.B.'s representative that, following the verifications carried out in response to her complaint (see paragraph 26 above), it had decided, in its capacity as data protection authority responsible for the supervision of processing of personal data, that the State Security Service should adopt a new version of its assessment of

30 March 2020 (see paragraph 18 above), to be transmitted to the Minister of the Interior and to the *Conseil d'État*.

RELEVANT DOMESTIC LAW AND PRACTICE

I. SECURITY FIRMS AND SECURITY DEPARTMENTS OF PUBLIC TRANSPORT COMPANIES

51. Pursuant to section 16 of the Private and Individual Security Act of 2 October 2017 (hereinafter "the Act"), no firm or in-house department of a company may provide security-guard services unless it has been duly authorised by the Minister of the Interior. Section 17 of the Act prohibits recourse to the services of an unauthorised firm. Before giving such authorisation, the Minister of the Interior may request the opinion of the Crown Prosecutor for the place where the firm or the in-house department is established and, if it is not established in Belgium, that of the Federal Prosecutor. The Minister may also request the relevant information from the State Security Service, collected under the Intelligence and Security Services (Organisation) Act of 30 November 1998, and if the firm or in-house department is not established in Belgium, from the General Intelligence and Security Service. The Minister of the Interior will always seek such an opinion if he or she finds that the firm or in-house department, or individuals by whom it is effectively run, as mentioned in the application file, are known for acts which may undermine confidence in the persons concerned (section 18 of the Act). Authorisation is granted for a period of five years and may be renewed for periods of the same duration (section 22 of the Act). The authorisation will stipulate the authorised activities (section 21 of the Act) and may exclude the exercise of certain activities and the use of certain means and methods or render them subject to specific conditions (section 20 of the Act). Authorisation will be granted only if the applicant satisfies all the requirements laid down in or pursuant to the Act, together with the minimum conditions laid down by the Crown concerning the staff and the organisational, technical and infrastructure resources that the firm or in-house department must have at its disposal, and the rules of conduct to be observed (section 32 of the Act). An identification card will be issued only if it is shown that the person for whom it has been requested satisfies all the conditions laid down in and pursuant to the Act for the exercise of the activities for which that card has been requested (section 77 of the Act).

52. Under section 3 of the Act, the following services are considered to be security-guard activities:

> "1° static guarding of movable or immovable property;
>
> 2° mobile guarding of movable or immovable property and intervention after alarms;

3º (a) supervision and/or protection, in whole or in part on the public highway, during the transport of property;

(b) the transport, in whole or in part on the public highway, of money or of property determined by the Crown, other than money, which by reason of its precious or special nature is subject to threats;

(c) the management of a money-counting centre;

(d) the supplying of cash machines, supervision of activities on such machines and unsupervised activities on cash machines outside occupied offices, if access to banknotes or cash containers is possible;

4º management of an alarm centre;

5º bodyguard services;

6º shop inspection;

7º any form of static guarding of property, public surveillance and supervision in order to ensure the safe and smooth conduct of events, hereinafter referred to as 'event security';

8º any form of static guarding, supervision and surveillance of the public in places belonging to the entertainment-venue environment, hereinafter referred to as 'venue security';

9º sweeping of movable or immovable property to search for spying devices, weapons, drugs, explosive substances, substances which may be used to make explosive substances or other dangerous items;

10º record taking relating exclusively to the immediately perceptible situation of property in a public place, on the order of the competent authority or of the holder of a public concession;

11º accompanying groups to ensure road safety;

12º operation of technical equipment determined by the Crown which is made available to third parties in order to ensure safety or security;

13º surveillance and supervision of persons in connection with the maintenance of security in places accessible or not to the public, other than as provided for in paragraphs 6º, 7º or 8º."

53. Under section 92, first paragraph, of the Act, security guard duties are to be performed unarmed. By way of derogation therefrom, the static or mobile guarding of movable or immovable property, military bases and international institutions or embassies determined by the Crown, by Royal Decree, may be exercised armed, provided that the security firm or in-house department has obtained special authorisation from the Minister of the Interior to perform armed security activities. Such authorisation may be granted only if it is necessary because other means or methods cannot suffice to anticipate or forestall the particular risk faced by the security guards themselves or the persons they protect (section 92, second paragraph, of the Act).

54. Under sections 60 (6º), 61 (6º) and 64 of the Act, persons performing duties in the context of a security firm or an in-house security department must satisfy the requisite profile comprising the following features:

> "1º respect for fundamental rights and the rights of one's fellow citizens;
>
> 2º integrity, loyalty and discretion;
>
> 3º an ability to deal with aggressive behaviour by third parties and to control oneself in such situations;
>
> 4º an absence of suspicious links with the criminal underworld;
>
> 5º respect for democratic values;
>
> 6º the absence of risks to the internal or external security of the State or to public order."

55. In a part relating to security departments of public transport companies, including the Société nationale des Chemins de Fer belges ("the SNCB"), the Act provides that the powers and duties of such departments are similar to those of in-house security departments and their employees, unless specific provisions derogate therefrom or provide for additional powers or duties. The security officers responsible for the security of the SNCB are competent to carry out their activities in stations, at unguarded stopping points, in trains belonging to railway companies, on tracks and in other publicly accessible areas of the railway network (section 160 of the Act).

56. By way of derogation from the Weapons Act, security officers working for public transport companies may be issued with a small-capacity spray containing a non-gaseous neutralising substance that does not cause permanent physical or material damage, and may also carry handcuffs (sections 164 and 166 of the Act). Security departments are not allowed to possess other weapons and the security officers cannot carry other weapons (section 165 of the Act). Security officers may exercise their powers on the public highway under the following cumulative conditions: (1) in the event of a road accident or of a recently committed criminal offence or in the event of conduct seriously endangering the safety of third parties or that of the officer; (2) within a 15-metre area surrounding the public transport company's vehicle; and (3) where the police are absent and pending their arrival (section 163 of the Act).

II. THE CLASSIFICATION OF INFORMATION, DOCUMENTS OR DATA

57. Under section 3 of the Classification and Security Clearances, Certificates and Assessments Act of 11 December 1998, any information, documents or data may be classified if their improper use may harm one of the following interests: (a) the defence of the integrity of national territory and military defence plans; (b) the performance of tasks by the armed forces;

(c) the internal security of the State and the preservation of the democratic and constitutional order; and (d) the performance of tasks by the intelligence and security services. Section 4 of the Act provides for three levels of classification: "top secret", "secret" and "confidential". The level "top secret" is assigned where the inappropriate use of the information, documents or data may very seriously harm one of the interests referred to in section 3. The level "secret" is assigned where such inappropriate use may *seriously* harm one of the interests referred to in section 3, while the level "confidential" is assigned where such inappropriate use may harm one of the interests referred to in section 3. Such misuse includes, *inter alia*, knowledge, possession, storage, use, processing, communication, dissemination, reproduction, transmission or transport.

58. Pursuant to section 7 of the Act, only the issuing authority, holding security clearance at the "secret" or a higher level, may, in accordance with the law, with the arrangements laid down by the Crown and with the directives of the National Security Council, classify or declassify documents or modify the classification level. The classification of a document shall expire after the issuing authority has expressly decided to declassify it, and, at the latest after 20 years for classification at the "confidential" level, 30 years for classification at the "secret" level and 50 years for classification at the "top secret" level. The issuing authority may at any time decide to remove or change the classification of a document before the time-limit for declassification. None of the provisions of the Act confer on the *Conseil d'État* the power to declassify classified documents or temporarily suspend (in whole or in part) such classification.

59. Section 8 of the Act allows the holder of the corresponding security clearance to access classified files if he or she needs to become apprised of them and to have access to them for the exercise of his or her duties or mission, "without prejudice to the specific powers of the judicial authorities" and other listed bodies. Although the *Conseil d'État* is not expressly mentioned in section 8, the State Security Service interprets the concept of "judicial authorities" therein with some flexibility and considers that the *Conseil d'État* (which in Belgian law is part of the administrative not the "judicial" order) nevertheless falls into that category. The State Security Service thus authorises the members of the *Conseil d'État* and *auditeurs* to access classified files which form the basis of administrative acts that are appealed against before the *Conseil d'État*, provided that the files are consulted on their secure premises.

III. THE ORGANISATION, ROLE AND DUTIES OF THE *AUDITEUR* AT THE *CONSEIL D'ÉTAT*

60. The office of *auditeur* has a preparatory role and is structurally independent from the judicial or advisory formation of the *Conseil d'État*. Its

duties are described for each type of procedure in the coordinated laws on the *Conseil d'État* of 12 January 1973. In the administrative litigation division, the *auditeurs* – independent and impartial *magistrats* – prepare cases, for which purpose they have investigative powers, and draw up a report on the case under examination. This report is non-binding and it indicates to the chamber of the *Conseil d'État* hearing a given case the consideration or solution that would be made or reached by the *auditeur* if he or she had final decision-making power (see the judgment of 6 April 1982 of the Administration Division, Fourth Chamber, of the *Conseil d'État*, A.24.173/1V-8473, no. 22.183).

THE COURT'S OPINION

I. PRELIMINARY CONSIDERATIONS

61. The Court finds it useful to restate here the following considerations that it has already set out in a number of its previous advisory opinions (see, most recently, *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], request no. P16-2022-001, Supreme Court of Finland, §§ 44-46, 13 April 2023). As stated in the Preamble to Protocol No. 16, the aim of the advisory procedure is to further enhance the interaction between the Court and national authorities and thereby reinforce the implementation of the Convention, in accordance with the principle of subsidiarity. The procedure allows the designated national courts and tribunals to request the Court to give an opinion on "questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto" (Article 1 § 1 of Protocol No. 16) arising "in the context of a case pending before [them]" (Article 1 §§ 1 and 2 of Protocol No. 16). The aim of the procedure is not to transfer the dispute to the Court, but rather to give the requesting court guidance on Convention issues when determining the case before it. The Court has no jurisdiction either to assess the facts of a case or to evaluate the merits of the parties' views on the interpretation of domestic law in the light of Convention law, or to rule on the outcome of the proceedings. Its role is limited to furnishing an opinion in relation to the questions submitted to it. It is for the requesting court or tribunal to resolve the issues raised by the case and to draw, as appropriate, the conclusions which flow from the opinion delivered by the Court for the provisions of national law invoked in the case and for the outcome of the case (ibid., § 44).

62. The Court has inferred from Article 1 §§ 1 and 2 of Protocol No. 16 that the opinions it delivers under this Protocol "must be confined to points that are directly connected to the proceedings pending at domestic level". Their value also lies in providing national courts with guidance on questions

of principle relating to the Convention applicable in similar cases (ibid., § 45).

63. Moreover, as is apparent from Article 1 § 3 of Protocol No. 16 and paragraphs 10-13 of the Guidelines on the implementation of the advisory procedure, it is for the requesting court to assess the most appropriate stage of the domestic proceedings at which the request for an advisory opinion should be made, so that the request contains all the necessary information to enable the Court to provide the interpretative guidance sought as regards the application of Convention law to those proceedings. The Court would observe in this connection that the request for the present opinion was received by the Court after the consultation by the *auditeur* at the *Conseil d'État* of the classified documents in the file compiled by the State Security Service, but before the members of the bench hearing the case had consulted those documents (see paragraphs 41 and 48 above).

64. In formulating its opinion, the Court will take due account of the written observations and documents submitted in the course of the proceedings before it. Nevertheless, the Court's task is not to reply to all the grounds and arguments submitted to it or to set out in detail the basis for its reply. Under Protocol No. 16, the Court's role is not to rule in adversarial proceedings on contentious applications by means of a binding judgment but rather, within as short a time frame as possible, to provide the requesting court or tribunal with guidance enabling it to ensure respect for Convention rights when determining the case before it (see Advisory opinion, request no. P16-2022-001, cited above, § 46).

II. THE QUESTION ASKED BY THE *CONSEIL D'ÉTAT*

A. Initial observation

65. As has been already pointed out (see paragraph 61 above), it is not for the Court to substitute its own view for that of the national authorities in examining the conditions to be met under Belgian law for the granting of authorisation to work as a security guard or officer. Its role consists rather of indicating, in a general manner, the criteria under the Convention that it considers relevant to enable the requesting court to examine the dispute before it (see, *mutatis mutandis*, *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French *Conseil d'État*, § 56, 13 July 2022). Having regard to the usefulness that this opinion is intended to have (see point 11 of the Explanatory Report in respect of Protocol No. 16), the Court will base its opinion as closely as possible on the legal and factual background to the request before it. It must be pointed out, however, that in delivering the

present opinion the Court has not been apprised of the material in the classified file compiled by the Belgian State Security Service.

B. Scope of protection under Article 9 of the Convention

66. The Court would begin by referring to its case-law, according to which freedom of thought, conscience and religion, as enshrined in Article 9 of the Convention, is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014; and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016).

67. Article 9 § 1 of the Convention encompasses two discrete aspects, on the one hand the right to *hold* a personal belief (a matter of each person's inner conviction or *forum internum*) and on the other the right to *manifest* such a belief (an individual's outward expression of a belief or *forum externum*). The distinction between these two aspects can clearly be seen in the formulation and sequencing of the two paragraphs of Article 9 of the Convention, which reads as follows:

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

68. The first paragraph of this Article refers to three types of acts in relation to an individual's freedom of thought, conscience or religion: the fact of "holding" a belief and, deriving therefrom, the fact of "changing" and the fact of "manifesting" that belief. The possibility for the State to restrict the exercise of these guaranteed rights is limited, as can be seen from the second paragraph, to the subject matter defined in the first paragraph after the word "and"; namely "freedom, either alone or in community with others and in public or private, to manifest [one's] religion or belief, in worship, teaching, practice and observance".

69. Freedom of thought, conscience and religion in general (freedom to "hold" any belief and to "change" religion or belief) cannot be subject to any

restriction or limitation. As shown by the Court's case-law, these are absolute rights and the State cannot interfere with them – for example, by dictating what a person should think or believe, taking coercive steps to make a person change his or her beliefs, or prohibiting conversion from one religion to another (see *Ivanova v. Bulgaria*, no. 52435/99, § 79, 12 April 2007, and *Mockutė v. Lithuania*, no. 66490/09, § 119, 27 February 2018).

70. Thus, for example, the Court found a violation of Article 9 of the Convention in the case of *Ivanova* (cited above) concerning the dismissal of the swimming pool manager in a State school. From the facts, the Court concluded that the real reason for the measure, which had been formally based on a change in the qualifications required for the post and the introduction of new requirements that the person concerned did not meet, lay in her religious beliefs and her affiliation to a religious community. In addition, the Government had not provided any evidence of credible accusations that the applicant had engaged in proselytising at the school or had committed any professional misconduct (ibid., § 82).

71. However, the freedom to manifest one's religion or beliefs, within the meaning of Article 9 § 2 of the Convention, is not, for its part, an absolute right. Since the manifestation by one person of his or her religious belief may have an impact on others, the drafters of the Convention qualified this aspect of freedom of religion in the manner set out in Article 9 § 2 (see *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 80, ECHR 2013 (extracts), and *Ivanova*, cited above, § 79).

72. The Court notes that the *Conseil d'État* has referred in its question to notions such as "being close to" or "belonging to" a religious movement, without clarifying whether they relate to proximity or adhesion in thought or rather to a concrete manifestation of such adhesion in the form of acts. The variations in the terminology used to describe an apparently identical factual situation, in the question and in the other material provided to the Court, which refers variously to the Salafist "ideology", "religious movement", "faction" (*mouvance*), "orientation" (*tendance*) or "branch" (*courant*), raise additional difficulties and do not allow it to be ascertained that the accusation against the individual concerned does actually fall within the realm of *forum externum*, which is the only aspect of freedom of religion where limitations would be permitted under Article 9 of the Convention. The Court is not in fact convinced that a "religious movement" is the same thing as an "ideology" or that the fact of "belonging to a movement" is synonymous with being the "supporter of an ideology", or even that these various notions are interchangeable. In any event, it is not for the Court, in delivering the present opinion, to resolve these semantic issues or to examine whether or not the terminology used in the question is deliberately distinguished from that used in the other documents provided to the Court. As certain material in the domestic file is classified, that would in any event be well-nigh impossible.

73. Be that as it may, in referring to Article 9 § 2 of the Convention, in its request for an advisory opinion, the *Conseil d'État* has posited the matter solely in terms of the right to manifest one's beliefs and religion (*forum externum*), in the particular circumstances, having regard to the uncertainties surrounding the notion of "being close to" (see paragraph 72 above), mainly concerns the fact of belonging to a religious movement. The Court will accordingly focus on the latter aspect.

74. As to the *forum externum* aspect, the Court would point out that Article 9 enumerates various possible forms of manifestation of a religion or a belief, namely, worship, teaching, practice and observance. In the light of present-day conditions, such "manifestations" of a religion or belief may also consist in the use of the internet and social media, forms of "manifestation" which are in principle protected by Article 9 of the Convention (see, on the novelty of the internet and its specific features in relation to freedom of expression, *Sanchez v. France* [GC], no. 45581/15, §§ 158-59, 15 May 2023, and the other references cited therein). Under this provision the freedom to manifest one's religion also encompasses the right to try to convince one's neighbour, for example through "teaching", failing which the "freedom to change [one's] religion or belief", as enshrined in Article 9, would be likely to remain a dead letter (see, among other authorities, *Kokkinakis*, cited above, § 31, and as regards the limits to such freedom see paragraph 80 below).

75. The Court infers from the question, as formulated in the request before it, that the *Conseil d'État* regards the refusal to authorise S.B. to work as a security guard or officer as constituting an interference with his rights under Article 9. In order to be compatible with this provision of the Convention, the interference must be "prescribed by law", must pursue one or more of the legitimate aims listed in Article 9 § 2, and must be "necessary in a democratic society" for the relevant aim to be achieved.

76. There is no reason for the Court, in these advisory proceedings, to examine whether those requirements have been met. Such assessment will fall to the *Conseil d'État* and should take account of the following criteria derived from the Convention.

77. The Court finds it appropriate at this juncture to reiterate its settled case-law, according to which the expression "prescribed by law", meaning that the impugned measure must have a basis in domestic law, also refers to the quality of the law in question. This expression thus requires that the law be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (see, among other authorities, in the context of Article 9 of the Convention, *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 84, ECHR 2005-XI, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 108-09, ECHR 2015). It will

therefore be incumbent on the *Conseil d'État* to ensure that the impugned interference has a legal basis which meets these requirements.

78. Concerning the legitimate aims that are apt to justify a restriction of the freedom to manifest one's religion or beliefs, it appears from the information provided to the Court that the measure in question in the proceedings giving rise to the request has been regarded by the *Conseil d'État* as pursuing at least one of the legitimate aims enumerated in Article 9 § 2 of the Convention, which in particular include public safety, the protection of public order and the protection of the rights and freedoms of others. In this connection, the Court reiterates that the enumeration of the legitimate aims in Article 9 § 2 is exhaustive and that the definition of the permitted exceptions to the individual's freedom to manifest his or her religion or beliefs is restrictive (see, among other authorities, *S.A.S. v. France* [GC], no. 43835/11, § 113, ECHR 2014 (extracts), and *Sviato-Mykhaïlivska Parafiya v. Ukraine*, no. 77703/01, §§ 132 and 137, 14 June 2007). The *Conseil d'État* will thus have to ensure that the refusal to authorise S.B.'s employment as a security guard or officer is prompted by an aim that can be linked to one of those listed in Article 9 § 2.

79. As to whether it may be "necessary in a democratic society" to refuse to authorise an individual's employment in the relevant occupation solely because he or she belongs to a religious movement that is regarded by the competent national administrative authority as representing a threat to the State in the medium to long term, consideration should be given to the following criteria in examining this question.

C. Criteria for examining the necessity in a democratic society of the interference at issue

1. A pressing social need

80. The Court would begin by reiterating that Article 9 does not protect every act motivated or inspired by a religion or belief such as dubious or improper forms of proselytising (see *Kokkinakis*, cited above, § 48, and *Larissis and Others*, cited above, § 45). The purpose expressly displayed or implicitly contained in the "teaching" given, its real or potential effects and the circumstances in which it has been disseminated, for example any multiplying effect that may have resulted from sharing it via social media, are factors to be taken into account to decide whether it is improper proselytising or, on the contrary, a form of teaching which warrants protection under Article 9 of the Convention (see, *mutatis mutandis*, *Kokkinakis*, cited above, § 48, and *Larissis and Others*, cited above, § 45).

81. That being said, it should also be borne in mind that, in the context of Articles 10 and 11 of the Convention, the Court has held that ideas or conduct cannot be excluded from the protection provided by the Convention merely because they are capable of creating a feeling of unease in groups of citizens

or because some may perceive them as disrespectful (see, among other authorities, *Vajnai v. Hungary*, no. 33629/06, § 57, ECHR 2008). The Convention is aimed at guaranteeing the articulation of views – even those which are difficult to accept for the authorities or a larger group of citizens and which contest the established order of society – through all peaceful and lawful means (see, among other authorities, *Vona v. Hungary*, no. 35943/10, § 63, ECHR 2013, and, *mutatis mutandis*, *Güneri and Others v. Turkey*, nos. 42853/98 and 2 others, § 76, 12 July 2005; *Gündüz v. Turkey*, no. 35071/97, §§ 50-52, ECHR 2003-XI; and *Zehra Foundation and Others v. Turkey*, no. 51595/07, § 55, 10 July 2018).

82. By contrast, the fact of abusing one's position and regularly posting content on social media which incites people to challenge or even to undermine the institutions of the State or respect for the rights and freedoms of others (see paragraph 48 above), while exerting undue pressure on the addressees of that content, represents a form of proselytising whose compatibility with Article 9 of the Convention will be open to doubt (see, *mutatis mutandis*, *Belkacem v. Belgium* (dec.), no. 34367/14, § 34, 17 June 2017). The assessment, in the light of Article 9, of such forms of proselytising, which deflect the freedom of expression guaranteed by Article 10 of the Convention from its real purpose, by using that freedom for ends clearly contrary to the spirit of the Convention, will have to be carried out in the light of the specific circumstances of each case, on the basis of the criteria and considerations already set out by the Court (see paragraphs 80 and 81 above).

83. One of the specific features of the situation under consideration relates to the fact that the interference complained of by S.B. was not a sanction for past conduct but a preventive measure that was decided to avert a risk that might, in the view of the State Security Service, be represented by S.B. if he were authorised to continuing performing very specific duties, namely those of a security guard or officer. This raises the question whether such preventive measures can be acceptable.

(a) Acceptability of preventive measures

84. The Court has previously had occasion to emphasise, under various Convention provisions, that a State's power of preventive intervention is consistent with the positive obligations of the Contracting Parties to secure the effective enjoyment of Convention rights and freedoms by persons within their jurisdiction. Those obligations relate not only to any interference that may result from acts or omissions imputable to agents of the State or occurring in public establishments but also to interference imputable to groups or private individuals within non-State entities (see, among other authorities, *Herri Batasuna and Batasuna v. Spain*, nos. 25803/04 and 25817/04, § 82, ECHR 2009, or, under Article 9, *Leela Förderkreis e.V. and*

Others v. Germany, no. 58911/00, § 99, 6 November 2008, and *C.R. v. Switzerland* (dec.), no. 40130/98, 14 October 1999).

85. The examples that follow, concerning a wide variety of subject matter, show that the national authorities may legitimately defend the values of a democratic society in the face of any threat to those values, by having recourse to preventive measures which may potentially restrict rights exercised collectively by an association, a political party, a religious movement or other type of movement, or certain individual rights.

(i) Preventive measures aimed at restricting rights exercised collectively by a group

86. The Court has thus found, for example, under Article 11 of the Convention, that "a State cannot be required to wait, before intervening, until a political party has seized power and begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy, even though the danger of that policy for democracy is sufficiently established and imminent". Where the presence of such a danger has been established by the national courts, after "detailed scrutiny", a State may "reasonably forestall the execution of ... a policy ... which is incompatible with the Convention's provisions, before an attempt is made to implement it through concrete steps that might prejudice civil peace and the country's democratic regime" (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, § 102, ECHR 2003-II; see also *Herri Batasuna and Batasuna*, cited above, § 81).

87. In the case of *Association of Citizens "Radko" and Paunkovski v. the former Yugoslav Republic of Macedonia* (no. 74651/01, § 71, ECHR 2009 (extracts)), while acknowledging that freedom of association was not absolute, the Court stated that where an association, through its activities or the intentions it expressly or implicitly declared in its programme, jeopardised the State's institutions or the rights and freedoms of others, Article 11 did "not deprive the State of the power to protect those institutions and persons". Since an association's programme might conceal objectives and intentions different from those that it proclaimed, "the content of the programme must be compared with the actions of the association's members and the positions they defend". Taken together, these acts and stances might be relevant to the preventive measure envisaged, such as proceedings for the dissolution of an association, "provided that as a whole they disclose its aims and intentions" (ibid., § 71, with further references).

88. In the case of *Vona* (cited above, §§ 57-58), the Court took the view, again under Article 11 of the Convention, that the State was entitled to take preventive measures to protect democracy – including measures "of considerable gravity" consisting of terminating the legal existence of an association on preventive grounds – if a sufficiently "imminent prejudice" to the rights of others threatened to undermine the fundamental values on the

basis of which a democratic society existed and functioned. To examine whether such a measure was compatible with Article 11 of the Convention, the Court had to ascertain, through a specific and personalised examination, whether it was justified by "relevant and sufficient" grounds meeting a "pressing social need" and whether the measure was proportionate to the legitimate aims pursued (ibid., §§ 70-71).

89. The Court has, moreover, indicated under Article 9 of the Convention that the States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public order (see *Manoussakis and Others v. Greece*, 26 September 1996, § 40, *Reports of Judgments and Decisions* 1996-IV, and *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 113, ECHR 2001-XII).

(ii) Preventive measures aimed at restricting rights exercised individually

90. In a case concerning Article 10 of the Convention, where the risk lay in the possibility that, contrary to the specific duties and responsibilities of teachers, the applicant, as a member of a group (the German Communist Party – Deutsche Kommunistische Partei, "DKP") which was attacking and casting aspersions on the State and the existing constitutional system, might take advantage of her position to indoctrinate or exert improper influence in another way on her pupils during lessons, the Court did not rule out the option of preventive measures being taken by the State if there was a pressing need to protect pupils from the applicant's influence and provided that a fair balance was struck between the various interests at stake (see *Vogt v. Germany*, 26 September 1995, § 60, Series A no. 323; see also, more recently, *Godenau v. Germany*, no. 80450/17, § 53, 29 November 2022).

91. In a case which bore a greater similarity to the factual and legal scenario of the request for the present advisory opinion, *C.R. v. Switzerland* (decision cited above), which precisely concerned the withdrawal of authorisation to run a private security agency whose registered purpose was "the provision of services in the field of security of persons and property", the Court found, under Article 9 of the Convention, that the national authorities could not be criticised for taking a preventive measure without waiting for the potential danger represented by the applicant's pursuit of his occupational activities to materialise by the commission of an offence. As in Belgium, Swiss law made the operation of a private security firm subject to a licence and required its managers to offer "every guarantee of honourableness", a condition which, according to the authorities, was no longer fulfilled in view of the seriousness of the risks represented by the applicant's conduct for the maintaining of public safety and public order, and for the rights of other citizens.

92. Accordingly, in response to the question whether the fact that an individual exercising sensitive duties belongs to a "religious movement" that,

in view of its characteristics, is regarded by the competent administrative authority as representing a risk for democratic society and its values in the medium to long term, may, in the light of Article 9 § 2 of the Convention, be a sufficient ground on which to take an unfavourable measure against that individual, it is appropriate to reply that this fact may in principle justify the taking of a preventive measure, subject to compliance with the requirements set out below.

(b) Requirements for the taking of individual preventive measures

93. It should be emphasised at the outset that the proceedings which gave rise to the request for the present opinion does not concern an ordinary occupation (compare, for example, *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, 17 October 2019, concerning measures affecting the employees of a supermarket), but rather that of an individual who, in the context of his employment, is vested with a degree of authority and is bound by an administrative authorisation procedure (see paragraphs 51-56 above). The risk analysis that the requesting court will have to carry out should thus take account of the nature of that specific role, since the risk incurred is different from any risk that might be represented by an employee working in a sector or branch of occupational activity that is considered less sensitive, as indeed reflected in the Belgian legislation.

(i) Nature of the risk

94. Without having consulted the classified file compiled by the State Security Service (see paragraphs 48 and 63 above), the *Conseil d'État* has asked the question whether the fact that a person belongs to a religious movement, considered by the competent authority to represent a threat to the country in the medium to long term, constitutes a sufficient ground, in the light of Article 9 § 2 of the Convention, for taking an unfavourable measure against that individual, such as a refusal to authorise him or her to work as a security guard or officer. The question does not therefore refer to any actual acts or conduct, past or future, which might justify a denial of authorisation to be so employed, but merely to the fact that the person concerned belongs to a movement considered to represent a threat to the State.

95. The assessment as to whether the risk is real and likely to materialise is a matter for the competent national authorities and must be carried out, *inter alia*, in the light of the substance of the beliefs or ideology in question, also having regard to the character of the person concerned and his or her actions, role and degree of adherence to the relevant religious movement. For that purpose, the competent national authorities enjoy a wide margin of appreciation, for they are best placed to make such an assessment, subject to review by an independent judicial authority (see paragraphs 111-112 below), based on the various data they have collected and their knowledge of the local

context (see, *mutatis mutandis*, *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 125, ECHR 2012 (extracts), and *Durisotto v. Italy* (dec.), no. 62804/13, § 40, 6 May 2014).

96. Beginning with the ideology in question, the Court notes that the specific risk identified by the State Security Service is a risk to the democratic and constitutional order, together with a serious threat to fundamental rights and freedoms, in particular those of women and, more generally, of non-Muslims, stemming from the influence brought to bear by supporters of scientific Salafism. More specifically, there is said to be a risk of: a legal regime ultimately being established on the basis of Sharia law; community segregation and "the emergence of truly parallel societies where the authority of a State and of a democratic system would no longer apply"; "polarisation of society"; and the undermining of the principles of "sexual equality" and "living together" (see paragraphs 24-25 above). It will fall to the *Conseil d'État* to satisfy itself, if need be by consulting the classified and other material gathered by the State Security Service, that the risk anticipated by that Service, in relation to the Salafist ideology, is sufficiently concrete and substantiated in terms of the means used and the process through which the risk may ultimately materialise.

97. Turning now to the character analysis to be carried out by the national authorities, it must be based on any evidence capable of revealing whether or not there is a risk of acts or conduct on the individual's part that would be harmful to persons or institutions and be prompted by Salafist ideology. That analysis must therefore take into account, among other factors, whether or not the individual has a criminal record, his or her professional background, and any administrative public-order measures such as a deportation order or a proposal to remove the individual from national territory, but also his or her role in the religious movement and his or her conduct in society in general, including on the internet and social networks.

98. In that context, although the absence of any professional misconduct on the part of the individual, or of any criminal complaints recorded against him or her, is a factor to be taken into account, it will not necessarily be decisive, in so far as the matter is to be seen from a preventive and not a punitive perspective. This is also apparent from the Act of 2 October 2017, which, by requiring that the profiles of prospective security guards be devoid of any risks for the internal or external security of the State or for public order, obliges the competent authorities to engage in a predictive exercise in respect of those concerned. In this connection, any ties of allegiance, submission or even subordination to a movement advocating a harmful ideology may prove relevant for the future and represent a risk, in terms of the instructions that it may wish to give to its followers and any ensuing acts or conduct (see, *mutatis mutandis, C.R. v. Switzerland*, decision cited above). The longer the validity of the requisite authorisation, the more the analysis will have to include this type of prediction. In short, it will be necessary for such purposes to look into

any specific acts and conduct which may shed light on the degree to which the individual belongs to to the religious movement in question and, depending on that degree, to assess the foreseeable consequences with a view to removing any risk.

99. In addition, it will be appropriate to take account of the nature of the tasks assigned to the post of security guard or officer that the individual in question wishes to hold (see, *mutatis mutandis*, *Vogt*, cited above, § 60; *Sodan v. Turkey*, no. 18650/05, § 53, 2 February 2016; and *C.R. v. Switzerland*, decision cited above). In many countries (see, for example, *C.R. v. Switzerland*, decision cited above), those who are so employed may have to perform tasks that are similar to those of the police (see paragraphs 52 and 56 above). Thus some of those tasks may require the security guard to be armed, on the condition that the security firm or department has obtained beforehand a special authorisation, while security officers may be equipped with a neutralising spray and handcuffs (see paragraphs 53 and 56 above). In addition, the security guard or officer will in principle have preferential access to the property and persons that he or she is responsible for protecting, without showing any discrimination, or to confidential information (see paragraphs 51-56 above). It is precisely for this reason that this category of employee may be subjected to enhanced requirements of loyalty towards a democratic society and its underlying values.

100. The existence of a risk that individuals employed as a security guard or officer might use the prerogatives and powers conferred on them by their duties for unlawful purposes cannot therefore be ruled out as a matter of principle. That risk must therefore be the subject of an individual and detailed assessment, in the light of the personal situation of the individual concerned (see paragraphs 13-16 above) and the religious "ideology" of which he or she is considered to be a follower, while avoiding any form of discrimination prohibited by Article 14 of the Convention in terms of access to employment, especially discrimination on grounds of religion, under the guise of protecting the values of a democratic society (see, *mutatis mutandis*, *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, §§ 86-88, ECHR 2013 (extracts)).

101. That personalised assessment – which must remain amenable to review by an independent judicial authority (see paragraphs 111-112 below) – cannot entirely disregard the general context for which it is intended, in particular the degree to which the religious movement in question has spread and established itself in society and any risk it may represent for the latter, this being for the national authorities to assess. In other words, if it is accepted that a religious movement itself poses a significant risk to society, the question will arise whether it is possible that its followers, taken individually, represent such a risk. This will depend in particular on the extent to which the followers are close to or belong to the religious movement in question, that is to say, on the degree of allegiance or subservience shown by them towards it,

which is once again a matter for the national authorities to assess. The Court thus found in *Sodan* (cited above, § 54), albeit under Article 8 read in the light of Article 9 of the Convention, that the mere fact of a person being close to or belonging to a religious movement was not sufficient to justify an unfavourable measure against that person, in the absence of any proof either that the person was receiving instructions from its members or that the movement in question genuinely represented a danger for national security.

102. For the purposes of this examination, the fact that the movement in question has not been dissolved or banned is pertinent but not decisive. The dissolution or banning of a movement, association or political party is an act which falls within the discretion of the competent authorities, subject to compliance with Article 11 of the Convention.

(ii) Reality and scale of the risk

103. Regardless of the nature of the right or interest that a preventive measure seeks to protect, there must be a real risk, in other words one that is sufficiently established. The containment of a mere speculative danger, presented as a preventive measure for the protection of democracy and its values, cannot be seen as meeting a pressing social need (see, among other authorities, *Vajnai*, cited above, § 55). For the adoption of preventive measures to be legitimate, it may be necessary for the authorities to make specific estimations of the potential scale of the consequences that the risk would entail if it is not eliminated in time (see, *mutatis mutandis*, *Fáber v. Hungary*, no. 40721/08, § 40, 24 July 2012, and *Barankevich v. Russia*, no. 10519/03, § 33, 26 July 2007).

104. In addition, the risk that the authorities' preventive action seeks to avert must be serious and even carry a certain gravity, without which any limitations of the rights and freedoms of others may not be legitimate (see, *mutatis mutandis*, *C.R. v. Switzerland*, decision cited above, where, in order to justify the preventive measure in question, the Court referred to "the gravity of the risks that the applicant's conduct might entail for the maintaining of public order, for public safety and for the protection of the rights and freedoms of others").

105. The assessment of the reality and scale of the risk by the competent national authorities must be amenable to review by an independent judicial authority (see paragraphs 101 above and 111-112 below).

(iii)Immediacy of the risk

106. As the Court has already observed (see paragraph 84 above), the authorities are bound by a positive obligation to act where they know or ought to know of the existence of a "real and immediate" risk to the life or bodily integrity of an individual (see, for a recent example, *Kurt v. Austria* [GC], no. 62903/15, § 158, 15 June 2021, with numerous references; see also

Osman v. the United Kingdom, 28 October 1998, § 116, *Reports* 1998-VIII; *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 482, 13 April 2017; *X and Others v. Bulgaria* [GC], no. 22457/16, § 183, 2 February 2021; and *Ribcheva and Others v. Bulgaria*, nos. 37801/16 and 2 others, § 158, 30 March 2021). The authorities must then do all that can be reasonably expected of them to prevent such a risk from materialising (the so-called "*Osman* test", see *Osman*, cited above, § 116; see also, *Kurt*, cited above, §§ 158-59).

107. Where, however, the acts of a political party, an association or a group are regarded as representing a risk for all or part of society, such a risk must be assessed differently, taking account of the fact that the risk in this sort of case will not usually take shape immediately but will emerge from a rather gradual and ongoing process. The need for the authorities to intervene preventively in order to protect the values of a democratic society will then depend on the actual influence exerted by the entity concerned on the opinions, values or institutions of that society, but also on its own followers, this being a matter for those authorities to assess and justify.

108. The Court has therefore taken the view that, in such cases, the State cannot be required to wait, before intervening, until a political or other movement has taken action to undermine democracy or has had recourse to violence (see paragraph 86 above). Even if such a movement has not made any attempt to seize power and the risk of its policy for democracy is not immediate or imminent, the State is entitled to act preventively if it is established that the movement has started to take concrete steps to implement a policy that is incompatible with Convention standards and the values of a democratic society (see, *mutatis mutandis*, *Vona*, cited above, § 57; *Zehra Foundation and Others*, cited above, § 58; *Refah Partisi (Welfare Party) and Others*, cited above, § 102; and *Kalifatstaat*, decision cited above; see also the case-law cited at paragraph 86 above).

109. According to the State Security Service, the ideology of the religious movement in question, of which S.B. is said to be a supporter, represents a threat to the State in the medium to long term. This is an assessment of fact which falls to the competent national authorities. It will nevertheless be for the requesting court to ascertain whether the religious movement has started to take concrete steps to implement a policy that is incompatible with the values of a democratic society. If so, the next question will be whether, as a follower of the movement and its ideology, the person concerned is likely, if employed as a security guard or officer, to act or behave in a manner that is incompatible with those values or with the duties of the profession.

110. As already indicated above, this analysis must be based on the person's background, but also on the degree to which he or she belongs to the religious movement in question, from which a bond of allegiance or submission may or may not arise – a bond which, if established, may constitute a risk for the person's entourage, especially work colleagues, since

he or she could receive instructions from the movement and act upon them (see paragraphs 100-101 above). It would be difficult to conceive that a democratic State could tolerate the idea of entrusting tasks requiring full allegiance to the values of a democratic society to a person who is submissive, or even subservient, to a religious or other movement whose ideology is considered by the competent authorities to be incompatible with those values and whose concrete actions have been shown to constitute a threat to that State.

(iv) Review by a judicial authority

111. As can be seen from the Court's case-law, it would be contrary to the rule of law for the discretion granted to the executive, in assessing the risks faced by a democratic society and its values and the necessity of taking preventive measures to restrict certain fundamental rights, to be expressed in terms of an unfettered power (see, *mutatis mutandis*, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 230, ECHR 2015; *Weber and Saravia v. Germany* (dec.), no. 54934/00, § 94, ECHR 2006-XI; and *Malone v. the United Kingdom*, 2 August 1984, § 68, Series A no. 82). In a democratic society governed by the rule of law, the review of the legality of such measures by an independent judicial authority, having access to the totality of the file compiled by the competent body in matters of national security, including to any classified documents, is a very weighty safeguard in terms of ensuring that measures based on confidential information – and challenged by those who suffer the consequences thereof – comply with the requirements of the Convention (see, *mutatis mutandis*, *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, §§ 156 and 201, 15 October 2020, and the other references cited therein).

112. According to the information available to the Court concerning Belgian law (see paragraphs 45 and 59 above), the *Conseil d'État*, like the *auditeur*, may be given access to the classified documents in the file compiled by the State Security Service. Such access can therefore be seen as a means of enabling that court to perform an effective review of the impugned measure, and that review, in order to meet Convention requirements, must concern the reality of the risk identified, its scale, its nature and its immediacy (see, *mutatis mutandis*, *Regner*, cited above, §§ 148-52; see also *Raza v. Bulgaria*, no. 31465/08, § 54, 11 February 2010, and *Lupsa v. Romania*, no. 10337/04, § 41, ECHR 2006-VII). The procedural safeguards that will have to surround such review will be addressed in paragraphs 116-117 below).

2. Proportionality

113. In order for the preventive measure at issue in the proceedings before the requesting court to be regarded as necessary in a democratic society, it

must also be proportionate to the legitimate aim or aims that it seeks to pursue and that will have to be identified by the national authorities beforehand in the light of Article 9 § 2 of the Convention (see paragraph 86 above).

114. To be proportionate the measure must first be regarded as not limiting the individual's rights under Article 9 beyond what is necessary to achieve the legitimate aim or aims pursued, which means ensuring that it or they cannot be achieved by any less intrusive or radical means (see, among other authorities, *Biblical Centre of the Chuvash Republic v. Russia*, no. 33203/08, § 58, 12 June 2014; *C. R. v. Switzerland* (dec.), cited above; and *mutatis mutandis, Glor v. Switzerland*, no. 13444/04, § 94, ECHR 2009). In such matters the national authorities are afforded a margin of appreciation for the purposes of striking a fair balance between the various interests at stake (see, among other authorities, under Article 9 of the Convention, *Eweida and Others,* cited above, § 94, and *Tonchev and Others v. Bulgaria*, no. 56862/15, § 49, 13 December 2022, with the references cited).

115. In this context it is for the competent national authorities to ascertain whether the interest pursued by the unfavourable measure, in this case a denial of authorisation to work as a security guard or officer, must outweigh the consequences for the person concerned. To that end, the following considerations must be taken into account: the nature of the duties of a security guard or officer and the requirements of the post, as provided for by the applicable domestic legislation; the nature and degree of the individual's adherence to the religious movement in question and the ensuing risks for the performance of duties as a security guard or officer; whether or not the employer is able to make adjustments to the individual's intended employment in order to remove or minimise the potential risks; and the fact that the impugned measure does not oblige the person to abandon his or her beliefs, or to change or cease his or her active practice in the movement (see, *mutatis mutandis*, *C.R. v. Switzerland*, decision cited above).

116. Furthermore, in order to be proportionate the impugned measure must be surrounded by appropriate procedural safeguards, such as to avert any risk of arbitrariness. In particular, there will be a need for the person concerned to be involved in the decision-making process, taken as a whole, to a degree that is sufficient to ensure the requisite protection of his or her interests (see, *mutatis mutandis*, *Lazoriva v. Ukraine*, no. 6878/14, § 63, 17 April 2018; *Elsholz v. Germany* [GC], no. 25735/94, § 52, ECHR 2000-VIII; *Sahin v. Germany* [GC], no. 30943/96, § 68, ECHR 2003-VIII; and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 161, 17 May 2016).

117. Admittedly, it is not the Court's task, in the context of these advisory proceedings, to ascertain whether adequate procedural safeguards have been afforded to the person concerned. At this juncture the Court would merely reiterate that where a measure that is unfavourable to the individual is based on classified information, only measures restricting procedural rights which

do not affect the very essence of those rights are permissible. In cases where evidence has not been disclosed to one of the parties on grounds of a duly justified public interest, the ensuing difficulties for that party must be sufficiently counterbalanced by the procedure followed by the judicial authorities, to ensure that, as far as possible, it complies with the requirements to provide for adversarial proceedings and an equality of arms and incorporates appropriate safeguards to protect the interests of the person concerned (see *Regner*, cited above, §§ 147-49). Those counterbalancing factors will include a review by the relevant court of the content of the classified information and its use in the reasoning of the decision appealed against, while, if appropriate, to the extent compatible with maintaining the confidentiality and proper conduct of investigations regarding an individual, informing that person, at the very least summarily, of the substance of the accusations against him or her (ibid., § 153, and *Muhammad and Muhammad*, cited above, §§ 134 and 151).

118. It will therefore be for the *Conseil d'État* to ensure that adequate counterbalancing measures, sufficient to mitigate the effects of any limitations of the person's procedural rights, have been applied or will be applied when the domestic proceedings resume (see *Muhammad and Muhammad*, cited above, § 144, and *Regner*, cited above, §§ 151 and 161). The Court would observe in this connection that any lack of fairness arising from a breach of the requirement of equality of arms at an early stage of the proceedings may be remedied, under certain conditions, at a later stage (see *Helle v. Finland*, 19 December 1997, § 54, *Reports* 1997-VIII).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

Delivers the following opinion:

The established fact that an individual belongs to a religious movement that, in view of its characteristics, is considered by the competent administrative authority to represent a threat to the State may justify a refusal to authorise that individual to work as a security guard or officer, provided that the measure in question:

(1) has an accessible and foreseeable legal basis;

(2) is adopted in the light of the conduct or acts of the individual concerned;

(3) is taken, having regard to the individual's occupational activity, for the purpose of averting a real and serious risk for democratic society, and pursues one or more of the legitimate aims under Article 9 § 2 of the Convention;

(4) is proportionate to the risk that it seeks to avert and to the legitimate aim or aims that it pursues; and

(5) may be referred to a judicial authority for a review that is independent, effective and surrounded by appropriate procedural safeguards, such as to ensure compliance with the requirements listed above.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 14 December 2023.

Johan Callewaert	Síofra O'Leary
Deputy to the Registrar	President