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Presentation on the execution of *Bekir-Ousta and others group of cases against Greece (Application No. 35151/05)*

EIN civil society briefing, Strasbourg, 23 November 2018

A. Introduction

Greece's failure for more than ten years to execute the **ECtHR** judgments finding violations of the freedom of association of the **three ethnic Turkish** associations of the *Bekir-Ousta and others group of cases* reflects the fact that **Greece** is the only European country whose administrative and judicial authorities do not recognize (or even simply acknowledge) the existence of **ethno-national (Turkish but also Macedonian) minorities**. If these associations (re-)register as a measure of execution of these judgments, this will be tantamount to a recognition (or acknowledgment) of the existence of **an ethno-national Turkish minority**, and hence to a reversal of Greek policy. Developments since December 2017 presented below have confirmed that the **Greek Government** and the **Greek courts** have no intention to implement the **ECtHR** judgments by allowing (re)registration of Turkish minority associations.

B. The Committee of Ministers December 2017 decision

In its 1302nd meeting (5-7 December 2017), the **Committee of Ministers of the Council of Europe** (CM) *"welcomed the adoption of the law allowing the reopening of the proceedings in the applicants' cases; [and], bearing in mind that the applicants may request the reopening of proceedings following the adoption of this law, invited the authorities to take the necessary measures to ensure that the relevant case law of the European Court, in particular the judgments in these cases, as well as the present decision of the Committee, are disseminated to all competent courts of all levels."* The **CM** further *"noted with regret that the registration of an association has recently been rejected on similar grounds as in the present group of cases and invited the authorities to provide information on the outcome of the pending proceedings before the Supreme Court; [and] invited the authorities to provide further information on the possible change in the domestic courts' case law concerning registration of associations in Thrace following the adoption of the above-mentioned law."*

C. Summary of developments since December 2017

Firstly, the **Cultural Association of Turkish Women in the Prefecture of Xanthi** was informed on 6 February 2018 of a 21 September 2017 **Supreme Court Judgment 1614/2017** confirming the **Single-Judge Appeals Court of Thrace Judgment 89/2014** by which that association was refused registration. These judgments concern the new case about which the **CM** in December 2017 "*noted with regret that the registration of an association has recently been rejected on similar grounds as in the present group of cases."* The **Supreme Court** in its judgment quoted extensively from the **Appeals Court** judgment. The association's title was considered *"misleading"* as its members are not and cannot be proven to be *"Turks"* and cannot claim a *"Turkish national (εθνική) identity"* which would indicate the presence of a *"structured national (εθνική) Turkish minority"* in **Xanthi**. That would also be contrary to *"the **Treaty of Lausanne of 1923** that recognizes only the existence of Muslim Greek citizens in Western Thrace (religious minority) and not a national (εθνική) Turkish minority."* The **Greek courts** in the judgments consider that the **Muslim inhabitants** of the **Xanthi Prefecture** are *"Turkish-origined (Τουρκογενείς), Pomaks, Roma, etc.)."* The

CM has ample information provided by the **Greek government** that in **Western Thrace** there is a multitude of **Pomak** and **Roma** associations, but no **Turkish** associations: **Greece** accepts (and in fact promotes) the ethnic identity of the **non-Turkish (Pomak or Roma) Muslims in Western Thrace**, but bans the ethnic identity of **Turkish Muslims.** Finally, the **CM** is requested to note that **Greece**, in its 2018 communications, has refused to address the **CM** December 2017 concerns on these developments. That constitutes definitive evidence that **Greece** has failed to implement the general measures.

Secondly, the **Turkish Union of Xanthi** was the first of the three Turkish minority associations of the *Bekir-Ousta group of cases* that filed an application for the reopening of the domestic proceedings, according to the new law. The case was heard by the **Three-Member Appeals Court of Thrace** on 9 February 2018. The **Greek government** represented by the **Region of Eastern Macedonia and Thrace** filed a memo with which it asked the rejection of the application and hence of the re-registration of the **Turkish Union of Xanthi**. The **Greek government** in its memo uses similar arguments with the ones invoked above from the **Supreme Court** judgment confirming the refusal to register the **Cultural Association of Turkish Women in the Prefecture of Xanthi**. It claims that according to the **Treaty of Lausanne of 1923**, *"in Thrace there are no Turks but Muslim Greek citizens… (religious minority)."* Then, it quotes extensively from the previous **Supreme Court Judgment 4/2005** and **Three-Member Appeals Court of Thrace judgment 31/2002** to base its rejection. Specifically, the **Turkish Union of Xanthi**'s functioning is considered to be a *"threat to public order"* because of its positions that *"the minority's rights are allegedly oppressed"* as well as to the fact that the reference to Turkish identity is *"aimed at promoting the interests of a foreign state, namely Turkey's."* The fact that these domestic judgments invoked were found by the **ECtHR** to violate freedom of association is countered by a reference to **Supreme Court Judgment 353/2012** in which it is stated that **ECtHR** judgments cannot affect domestic legal order in a way leading to the amendment of previous domestic judgments found by the **ECtHR** to violate the **ECHR**. The **Supreme Court Judgment 4/2005** dissolving the **Turkish Union of Xanthi** is thus considered by the **Greek government** irrevocable. Hence, the **Greek government** argues that there cannot be a revision of the judgments in the case of **Turkish Union of Xanthi** on the basis of Articles 29 and 30 of Law 4491/20017. This because of the restrictions in those legal provisions that do not allow the reopening when the association's aims *"are opposed to public order and to international treaties (Treaty of Lausanne)."* The **Supreme Court** has irrevocably held that this holds for the **Turkish Union of Xanthi** aims.

Thirdly, the **Three-Member Appeals Court of Thrace** on 22 June 2018 with judgment 96/2018 rejected the **Turkish Union of Xanthi** application for the reopening of the domestic proceedings in implementation of the newly introduced legal provision of Law 4491/2017, but on different grounds. The **Greek government** asked for a rejection on the merits because the association was a threat to public order. However, the **Appeals Court of Thrace** rejected it as inadmissible. The court ruled that the **Turkish Union of Xanthi** did not to have the right to use the new procedure introduced with Law 4491/2017 so as to seek the reopening of the case. That court recalled that the said association had already filed a similar application of reopening after the first **ECtHR** judgment, on 14 November 2008. That application was rejected on its merits by the **Appeals Court of Thrace** with judgment 477/2009 and then by the **Supreme Court** with judgments 353/2012 and 1549/2012. Therefore, the recent inadmissibility judgment was based on the procedural principle of non bis in idem. The domestic court argued that there was no new element since the 2012 rejection of the previous application to overturn the same **Appeals Court of Thrace** judgment 31/2002 by which the **Turkish Union of Xanthi** had been dissolved. Legal certainty prohibits the repetition of the same legal procedure, lest judgments can be challenged ad aeternum, added the domestic court. The **CM** is requested to also note that once again, a Greek domestic court ruled that **ECtHR** judgments cannot on their own affect the domestic legal order and lead to the automatic annulment of domestic court judgments found by the **ECtHR** in violation of the **ECHR**.

This means that any similar applications for the reopening of the proceedings on the basis of Articles 29 and 30 of Law 4491/2017, by **ethnic Turkish and ethnic Macedonian minority associations** vindicated by the **ECtHR**, will have no chance to become admissible by domestic courts. Such applications include the ones filed by the **Cultural Association of Turkish Women in the Rodopi Prefecture** and the **Minority Youth Association at the Evros Prefecture**, which will be heard on 7 December 2018 by the same **Three-**

Member Appeals Court of Thrace. This because they have all previously filed similar applications for reopening of their cases after the **ECtHR**'s judgments and before the introduction of Law 4491/2017. Unless of course judgment 96/2018 is overturned on cassation, after the appeal for cassation filed on 30 October 2018 by the **Turkish Union of Xanthi** is heard and ruled upon by the **Supreme Court** in the near or distant future, since no hearing date has been set.

Fourthly, if the **Greek government** had intended sincerely to use the recent legislation to seek the overturning of domestic court judgments that dissolved or refused registration to these **Turkish minority associations**, it should have announced that it intended to seek the cassation of judgment 96/2018 by the **Supreme Court**. This suggestion was made in a **GHM** communication but the **Greek government** did not reply to this or to any other suggestion or argument made in our submissions, nor was such an appeal for cassation filed.

Fifthly, the **CM** is urged to take into consideration a historic development that sets a constructive precedent for the execution of many if not of most **ECtHR** judgments, including the one in the *Bekir-Ousta group of cases*. The **Supreme Court Prosecutor**, on 30 October 2018, filed an appeal for the cassation of a domestic court judgment for the benefit of the law, to comply with an **ECtHR** judgment ruling that this domestic judgment was violating the **ECHR**. The prosecutor stated that, if confirmed by the **Supreme Court**, the cassation will remove that domestic judgment from the case-law so as to prevent the repetition of judgments with similar reasoning and/or invoking that judgment. This seminal decision of the **Supreme Court Prosecutor** concerned the execution of the **ECtHR** judgment (violation of Article 4 **ECHR**) in *Chowdury and others v. Greece*. In previous communications on the *Bekir-Ousta group of cases*, **GHM** had recommended such appeals for cassation by the **Supreme Court Prosecutor**. Now that it was done for the execution of another judgment, **GHM** recommends as a fundamental remedy to execute **ECtHR** judgments the filing of such appeals for cassation by the **Supreme Court Prosecutor**, including against the **Appeals Court of Thrace** judgments that led in the past to the dissolution of the **Turkish Union of Xanthi** and recently to the refusal to annul the dissolution; as well as to the refusal in the past to register the **Cultural Association of Turkish Women in the Rodopi Prefecture,** the **Minority Youth Association at the Evros Prefecture**.[1]

[1] Additionally, the **Greek government** argues that the **Region of Eastern Macedonia and Thrace** which is litigating the cases before the **Three-Member Appeals Court of Thrace** is independent from the central government. This is partly inaccurate as the central government has the mandate to challenge regional governments' actions if they are in strict opposition to the law, which it has not done in this case. Moreover, the central government has the possibility to file third-party interventions in the legal proceedings in the adjudication of these cases. This it has not done, as it is satisfied with the outcome of the proceedings preventing the (re)establishment of the **Turkish minority associations**. The **Greek government** refrained from declaring such satisfaction in its communications to the **CM** but has stated during the **OSCE Human Dimension Implementation Meeting** (statement dated 25 September 2018): **"***We are aware of the judgement of (…) the Court of Appeal of Thrace (N.96/2018, 22.6.2018) which was dismissive of the new request by the minority association. Nevertheless, everyone, including the Greek government has to respect the rulings of the independent Greek Judicial System."* To the **CM** the **Greek government** merely asks the **CM** not to address the execution before the new domestic remedies are exhausted by the three **Turkish minority** associations, several years from now if/since their applications reach the **Supreme Court**. As the **Turkish Union of Xanthi** stated in its 16 November 2018 submission to the **CM** *"the letter of the Greek Ambassador unveils without leaving the slightest room for doubt that the intention of Greek authorities is to procrastinate our case as long as possible."*

D. Recommendations

From the aforementioned presentation, **GHM** and the **Turkish Union of Xanthi** firmly believe that it is clear beyond any doubt that the **Greek Government** and the **Greek Courts** have no intention to implement the individual measures and the general measures ensuing from the *Bekir-Ousta group of cases*, namely to promptly (re)register any Turkish minority association. The **Committee of Ministers** is therefore urged to issue a very strongly worded resolution in view of no longer the absence of any tangible progress, but of the presence of a tangible regression amounting to a refusal to implement the **ECtHR** judgments. The **Greek government** should be asked to:

1. **provide explanations for the two domestic court decisions:**

   a) not to register the new Cultural Association of Turkish Women in the Prefecture of Xanthi and

   b) to reject as inadmissible the Turkish Union of Xanthi's application based on the new law to reopen its case so as to have its dissolution annulled;

2. **use all available means including third-party interventions in domestic court proceedings, especially in the 7 December 2018 hearings of the applications for reopening by the Cultural Association of Turkish Women in the Rodopi Prefecture, and by the Minority Youth Association at the Evros Prefecture, making it clear that the *Bekir-Ousta* associations should be (re)registered; and/or**

3. **promptly introduce a legislative amendment that will remove from the reluctant courts the power to refuse registration or superficially decide on dissolutions of associations, changing the procedure so as to introduce a simple registration of associations along inter alia the French model; and, in any case,**

4. **request the Supreme Court Prosecutor to file appeals for cassation against all domestic judgments that were found by the ECtHR to violate the ECHR, including the four judgments related to the Bekir-Ousta associations.**