SECRETARIAT GENERAL

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COMITÉ DES MINISTRES

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Meeting: 1302nd meeting (December 2017) (DH)

Communication from a NGO (Greek Helsinki Monitor) (06/11/2017) and reply from the authorities (17/11/2017) in the cases of BEKIR-OUSTA AND OTHERS and HOUSE OF MACEDONIAN CIVILIZATION AND OTHERS v. Greece (Applications No. 35151/05, 1295/10).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1302e réunion (décembre 2017) (DH)

Communication d'une ONG (Greek Helsinki Monitor) (06/11/2017) et réponse des autorités (17/11/2017) dans les affaires BEKIR-OUSTA ET AUTRES et HOUSE OF MACEDONIAN CIVILIZATION ET AUTRES c. Grèce (Requêtes n° 35151/05, 1295/10) ***[anglais uniquement]***

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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5 November 2017

Bekir-Ousta and others group of cases against Greece (Application No. 35151/05)* and *House of Macedonian Civilisation and others against Greece (Application No. 1295/10)

Mr President

Under Rules 9(1) and 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments we submit the attached memo on the execution of *Bekir-Ousta and others group of cases against Greece (Application No. 35151/05)* and of *House of Macedonian Civilisation and others against Greece (Application No. 1295/10)* and request that the memo is also uploaded at your special website for the *1302nd meeting (5-7 December 2017) (DH).*

Yours faithfully

Panayote Dimitras
Executive Director
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Communication on the execution of
***Bekir-Ousta and others group of cases against Greece (Application No. 35151/05)* and of**
House of Macedonian Civilization and others against Greece (Application No. 1295/10)

5 November 2017

The **Committee of Ministers** (CM) is requested to note that the **Greek Government** did not comment on the 16 September 2017 **Greek Helsinki Monitor** (GHM) submission on these cases. It included the **Single-Judge Appeals Court of Thrace Judgment 89/2014** (in Greek) by which the **Cultural Association of Turkish Women in the Prefecture of Xanthi** was refused registration, on appeal (an appeal for cassation is pending before the **Supreme Court**). That judgment is a violation of the general measures in *Bekir-Ousta* that the **Greek Government** is supposed to be implementing.

Today, **GHM** attaches the **Small Claims Court of Florina Judgment 16/2017** (in Greek) by which the **House of Macedonian Civilization** was again refused recognition, despite the two **ECtHR** judgments finding **Greece** in violation of freedom of association. This is a violation of the **Greek Government**'s submission to the **CM** in 2000, after the first **ECtHR** judgment in 1998, alleging *"the exceptional nature of the case,"* committing that *"the Greek courts will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case"* and concluding that *"accordingly, the Government of Greece is of the opinion that it has complied with its obligations under Article 53 of the Convention."* The **CM** is already aware that, on the contrary, the Greek courts refused the registration of that association after the first **ECtHR** judgment which led to a second **ECtHR** judgment in 2015, for the execution of which the **CM** awaits an action plan/report, after an effectively "empty" submission to the CM in 2016. The **Florina court** based its judgment on the domestic case law, i.e. the two previous refusals of recognition of that association. The **Florina court** included lengthy quotes from these judgments arguing that there is no **Macedonian nation**, no **Macedonian culture**, no **Macedonian language**, and no **Macedonian minority**; hence, the aim of the association is contrary to public order and security, endangering the institutions of the **Greek State**. The **Florina court** argued that the **ECtHR** judgments do not penetrate the Greek legal order and hence cannot annul the domestic court judgments. It added that the previous domestic judgments were issued not only because the aims of the association were a threat to public order and security but also *"to protect the rights and freedoms of others, protected by Article 8 ECHR,"* which rights, the **Florina court** claimed, were not taken into consideration by the **ECtHR**. The **Florina court** finally stated that the situation concerns a sensitive issue of cultural identity and is thus similar to the ban to wear the burqua that the **ECtHR** upheld in *S.A.S. v. France*.

The **CM** is also requested to compare the texts of the amendments finally adopted by the **Greek Parliament** on 13 October 2017 as submitted on 23 October 2017 to the **CM** by the **Greek Government** with the amendments initially tabled before the **Greek Parliament** but withdrawn because of widespread opposition as submitted on 11 September 2017 to the **CM** by the **Greek Government**. In the initial amendments, the admissibility of an application of revocation or amendment following an **ECtHR** judgment was binding for the domestic courts, which then had to examine the merits of the application. In the finally adopted legislative provisions, the admissibility of an application of revocation or amendment following an **ECtHR** judgment to be issued in the future is no longer binding but is *"subject to the terms and restrictions provided in the relevant provisions of*

ECHR concerning the protection of national security, public order, the prevention of crime, the protection of health or morals and the protection of rights and freedoms of others." Additionally, for **ECtHR** judgments issued in the past, such application has to also satisfy *"the restrictions of article 11 par. 2. of the ECHR and the other provisions of ECHR, as well as international conventions."* [sic – they mean international treaties (συνθήκες) and imply the **Treaty of Lausanne**]. During the parliamentary debate, it had become clear that, except for the senior government partner **SYRIZA**, no other party was willing to vote for the initially tabled amendments unless the restrictions mentioned above were added. **Then all major non-extremist political parties voted in favour of the amendments with the notable and historical first ever dissent from the party lines by all four "Muslim" (i.e. Turkish) minority MPs who voted against the amendments because they considered them ostensible pretexts.** The **CM** is aware that the restrictions introduced by the Greek legislator had been taken into consideration by the **ECtHR** when the latter issued the five judgments for the three **Turkish** and, twice, for the one **Macedonian** associations. The **ECtHR** had then rejected these restrictions which were included in the **Greek Government**'s observations. Now the **Greek Government** and the **Greek Parliament** introduced them in the legislation on the possible re-examination of these cases so that domestic courts, in addition to their persistent refusal to register **Turkish and Macedonian minority associations**, are empowered with a legal provision to consider inadmissible such applications for revocation.

The **CM** is therefore requested to reject the **Greek Government**'s conclusion: *"Il s'agit d'une évolution importante de la législation interne qui répond aux demandes du Comité des Ministres (CM/Del/Dec(2017)1294/H46-12 et CM/Del/Dec(2017)1280/H46-13), dans la mesure où elle permet la réouverture devant les juridictions helléniques et l'examen à la lumière des constats de la CEDH des demandes d'enregistrement des associations des requérants."* The **CM** is urged to conclude that, on the contrary, this development of the legislation **does not respond to the demands of the CM as it effectively does not allow the re-examination by the Greek courts of the applications for registration of the applicants' associations.** The **CM** is also requested to recall that the **Greek Government** has failed to execute for 20 years the **House of Macedonian Civilization** judgments and for 10 years the three Turkish associations judgments in the **Bekir Ousta group of cases**. The **CM** is also requested to recall that 2 years ago the **ECtHR** decided not to examine new applications by the three Turkish associations as long as the **CM** is examining the (non-)execution of the corresponding 2008 judgments. Finally, the **CM** should take into consideration that during that 20-year period, several **UN Treaty Bodies** and **Council of Europe** institutions like the **Commissioner for Human Rights** and **Parliamentary Assembly of the Council of Europe** have issued recommendations asking **Greece** to register these minority associations and/or recognize the corresponding **ethnic Turkish and Macedonian minorities**: **Greece** has opted to ignore all these recommendations.

The **CM** is requested to consider that the **Greek Government** may be in effect violating **Article 18 ECHR**, after the introduction in domestic legislation of restrictions included in **Article 11 ECHR** that the **ECtHR** has ruled that they cannot apply in the cases of the minority associations, with the sole purpose to prevent the execution of the judgments. The abusive introduction in domestic legislation of these restrictions for reasons of state or to safeguard ethnic majority political tendencies against ethic minority actors amounts to a destruction of the fundamental freedom of association. Since the **CM** does not have the competence to examine such claim and in view of the decades-long obstinacy of **Greece** not to execute these judgments, coupled only by its adamant refusal to recognize the existence of **ethnic minorities** in its territory, a unique case among **Council of Europe** member states, the **CM** is requested to serve formal notice on **Greece** of its intention, at a future meeting in 2018, to refer to the **ECtHR**, in accordance with Article 46§4 of the **ECHR**, the question whether **Greece** has failed to fulfil its obligation under Article 46§1 by non-registering the four minority associations successful before the **ECtHR** as well as a newly established **Turkish minority association**. The **CM** may also offer the **Greek Government** the option to change the procedure for registration of associations so as not to depend on judgments by domestic courts that appear reluctant to register **ethnic Turkish and Macedonian associations**.

REPRESENTATION PERMANENTE DE LA GRECE
AUPRES DU CONSEIL DE L'EUROPE
Le Représentant Permanent

Réf. : F. 6702/A.S. 1040

Strasbourg, le 17 novembre 2017

Objet : Groupe d'affaires Bekir-Ousta et autres c. Grèce (requêtes Nos 35151/05, 34144/05 et 26698/05) - 1302e réunion du CM-DH.

Chère Madame Mayer,

En réponse à la communication du directeur exécutif de Greek Helsinki Monitor datée du 5 novembre 2017 je souhaite faire les remarques suivantes :

Les articles 29 et 30 de la loi n°4491/2017 apportant la modification du Code de procédure civile en cause, ont été adoptés à une large majorité parlementaire, ce qui témoigne de l'importance accordée à l'exécution des arrêts de la Cour par la Grèce.

L'article 758 § 1 du Code de procédure civile, tel qu'amendé par l'article 29 de la loi n° 4491/2017, soumet le droit de demander la révision ou la révocation d'une décision judiciaire interne dont la Cour aurait estimé que celle-ci a été rendue en violation d'une disposition de la Convention européenne des droits de l'homme, aux conditions et restrictions prévues par cette même Convention, à laquelle l'amendement précité fait expressément référence.

Dans un Etat de droit régi par la séparation des pouvoirs, comme la Grèce, il n'est pas du ressort du Gouvernement de se prononcer avec l'autorité de la chose jugée sur l'interprétation des lois. Toutefois, si l'on s'en tient à la lettre de l'article 29 de la loi n° 4491/2017, on ne peut pas taxer l'article 758 § 1 du Code de procédure civile de violation de la Convention alors qu'il ne fait qu'en reprendre les dispositions.

Par ailleurs, les jugements Nos 89/2014 et 16/2017 de la Cour d'appel de Thrace et du Tribunal de paix de Florina respectivement, mentionnés dans la communication du

directeur exécutif du Greek Helsinki Monitor, ont été rendus le premier en 2014 et le deuxième le 11.9.2017. Ils ont donc été rendus antérieurement au 13.10.2017, date de la publication et de l'entrée en vigueur de la loi n° 4491/2017.

Dans ces conditions, ils ne constituent pas des éléments pertinents pour évaluer l'incidence de cette loi toute récente sur des jugements qui pourraient être rendus ultérieurement, concernant notamment la liberté d'association.

Je vous prie de croire, Madame, à l'assurance de ma haute considération.

Prof. Stelios Perrakis
Ambassadeur

Mme Geneviève Mayer
Chef du Service de l'exécution des arrêts
de la Cour européenne des droits de l'Homme

c/c : M. Christos Giakoumopoulos
Directeur général des Droits de l'Homme
et Etat de Droit du Conseil de l'Europe