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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1318th meeting (June 2018) (DH)

Communication from a NGO (Greek Helsinki Monitor) (08/03/2018) in the case of Bekir-Ousta v. Greece (Application No. 35151/05) and response from the Greek authorities (16/03/2018).

Information made available under Rules 9.2 and 9.6 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 : 1318^e réunion (juin 2018) (DH)

Communication d'une ONG (Greek Helsinki Monitor) (08/03/2018) dans l'affaire Bekir-Ousta c. Grèce (Requête n° 35151/05) et réponse des autorités grecques (16/03/2018) **[anglais uniquement]**

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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8 March 2018

Bekir-Ousta and others group of cases against Greece (Application No. 35151/05)

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 request that the memo is also uploaded at your special website.

Yours faithfully

**Panayote Dimitras
Executive Director
Greek Helsinki Monitor**



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

8 March 2018

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.”

Two developments since then have confirmed that the **Greek Government** and the **Greek courts** have no intention to implement the **ECtHR** judgments and allow the (re)registration of the Turkish minority associations.

**Supreme Court confirms refusal to register
the Cultural Association of Turkish Women in the Prefecture of Xanthi**

First, the **Greek Government** has failed to inform the CM of the **Supreme Court Judgment 1614/2017** concerning the **Cultural Association of Turkish Women in the Prefecture of Xanthi** even though that judgment attached here [**Attachment 1**] dates from 29 June 2017. In the judgment it is mentioned that it was published on 21 September 2017. Yet, the association was not provided with information about the judgment from the **Supreme Court** secretariat until after the December 2017 CM meeting (the copy attached was notarized on 6 February 2018). The reason was obvious: the **Supreme Court** had considered the motion for cassation admissible but then had proceeded to reject it on the merits, thus confirming the **Single-Judge Appeals Court of Thrace Judgment 89/2014** by which the **Cultural Association of Turkish Women in the Prefecture of Xanthi** was refused registration. The **Supreme Court** in its judgment quoted extensively from the **Appeals Court** judgment in which 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-originated (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. Moreover, the *Emin and others* **ECtHR** judgment invoked by the association’s members

was according to the courts irrelevant as in that judgment the **Cultural Association of Turkish Women in the Prefecture of Rodopi** was refused registration because its aims were opposed to public order, a legal argument that was not according to the courts related to the case of the **Cultural Association of Turkish Women in the Prefecture of Xanthi**.

Greek government refuses the re-registration of the Turkish Union of Xanthi

The **Turkish Union of Xanthi** has been the only one of the three Turkish minority associations of the **Bekir-Ousta group of cases** that has filed an application for the reopening of the domestic proceedings. 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 memo is attached here [**Attachment 2**]. The **CM** is requested to note that the **Greek government** did not inform the court of the **CM** December 2017 decision, despite the **CM** expressed request. The court's decision is pending but in view of both the well-established case-law (see above) and the government's position, it is expected that the **Three-Member Appeals Court of Thrace** will reject the application and hence the implementation of the **ECtHR** judgment.

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. Interestingly, it is recalled therein that the **Turkish Union of Xanthi** was registered in 1946 through **Multi-Member First Instance Court of Xanthi Judgment 287/1946** with statutes expressly mentioning that its aim was to serve the "*Western Thrace Turks*." It is then claimed that such aim was in violation of the **Treaty of Lausanne** which, it is argued, recognized only a "*religious Muslim minority*" and not a "*national (εθνική) Turkish minority*." No argument is put forward however as to why in 1946 and for the ensuing 40 years (the **Turkish Union of Xanthi** was dissolved by the Greek courts in 1986) no such incompatibility was ever invoked. Additionally, the claim that its functioning is a "*threat to public order*" is based on the association's 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 **Greek government** furthermore claims that in Western Thrace live "*two Greek communities, a Muslim one and a Christian one*," implicitly considering all minority members ethnic Greeks! Finally, the **Greek government** recalls **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 violation the **ECHR**. **The Supreme Court Judgment 4/2005 is therefore irrevocable**. For that reason, 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, as the case falls in the restrictions of those legal provisions that do not allow the reopening when the association's aims, as ruled irrevocably by the **Supreme Court** in its judgment, "*are opposed to public order and to international treaties (Treaty of Lausanne)*."

Conclusion

From the aforementioned presentation, 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 (re)register any Turkish minority association. The Committee of Ministers is therefore urged to resume the consideration of these cases at the earliest possible opportunity so as to issue a strong resolution in view of the presence, not of no tangible progress, but of a tangible regression amounting to a refusal to implement the ECtHR judgments.

DGI

16 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH



REPRESENTATION PERMANENTE DE LA GRECE
AUPRES DU CONSEIL DE L'EUROPE

Le Représentant Permanent

Réf. : F. 6702/A.S. 200

Strasbourg, le 15 mars 2018

Objet : Groupe d'affaires "Bekir-Ousta" (requêtes nos 35151/05, 34144/05 et 26698/05) - Communication du directeur exécutif du Greek Helsinki Monitor (GHM) datée du 8 mars 2018.

Chère Madame Mayer,

En réponse à la communication du directeur exécutif du GHM datée du 8 mars 2018 je souhaiterais faire les remarques suivantes :

Dans la 1302^e réunion CM-DH (5-7 décembre 2017) les Délégués des Ministres ont décidé de reprendre l'examen du groupe d'affaires mentionné en objet, après qu'une décision de justice ait été rendue dans le contexte des procédures éventuellement rouvertes en vertu des articles 29 et 30 de la loi n°4491/2017 (CM/Del/Dec(2017)1302/H46-10).


Des documents fournis par le directeur du GHM, il appert que l'association "Tourkiki Enosi Xanthis" a effectivement déposé auprès de la Cour d'appel de Thrace une demande de réexamen de son affaire en vertu de la loi susmentionnée. Il appert, également, que sa demande a été débattue le 9 février 2018, que les parties adverses ont soumis leurs conclusions - le gouvernement hellénique n'était pas partie litigante dans la procédure y afférente - et que les débats sont clos. Il appert finalement -et cela est également très important- qu'actuellement l'affaire est en délibéré.

En au droit grec (articles 112 et 113 du Code de procédure civile) le procès civil repose sur une distinction entre l'instruction, d'une part, et l'audience qui précède l'issue de

l'instance, d'autre part. Ainsi l'audience est publique, tandis que l'instruction de l'affaire et la phase du délibéré ne le sont pas, en ce sens qu'il ne peut y avoir communication des conclusions des parties à des tiers. Il est évident qu'une fois les débats clos, il convient, dans l'intérêt de la bonne administration de la justice, d'éviter tout commentaire qui pourrait être perçu comme une pression à la juridiction saisie. Or, la communication du directeur GHM va en sens inverse.

Dans ces conditions, la communication précitée du directeur du GHM et les documents auxquels il y est fait référence ne constituent pas d'éléments pertinents pour évaluer l'incidence de la loi n°4491/2017 sur l'exécution des arrêts rendus par la Cour de Strasbourg dans le groupe d'affaires en objet. Cela vaut également pour l'arrêt de la Cour de cassation n° 1614/2017 qui a été rendu le 21 septembre 2017, c'est-à-dire avant l'entrée en vigueur de la loi n°4491/2017.

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