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Avrupa Batı Trakya Türk Federasyonu Föderation der West-Thrakien Türken in Europa Federation of Western Thrace Turks in Europe Ευρωπαϊκή Ομοσπονδία Τούρκων Δυτικής Θράκης Fédération des Turcs de Thrace Occidentale en Europe

NGO in Special Consultative Status with the Economic and Social Council of the United Nations Member of the Fundamental Rights Platform (FRP) of the European Union Agency for Fundamental Rights Member of the Federal Union of European Nationalities (FUEN)

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OSCE

Supplementary Human Dimension Meeting on Freedom of Assembly and Association 8-9 November 2012

SESSION I: Freedom of Association: obstacles to the full realization of this right and ways to overcome them

Ms. Moderator Distinguished representatives And esteemed NGO Delegates,

In the Universal Declaration of Human Rights, which set a common standard of achievement for all peoples and nations, Member States declared hat everyone has the right to freedom of peaceful assembly and association and no one may be compelled to belong to an association (Article 20). The freedom of assembly and association constitute the cornerstones of representative democratic system and the exercise of these rights have always been at the heart of the struggle for democracy around the world, and they still remain at the heart of societies, since they are essential to the development of civil society and thus to the strength of democracy.

Among all international organizations, the OSCE attaches a great importance to the freedom of assembly and association. In Copenhagen, in 1990, the OSCE participating States committed that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards". In Helsinki, in the Ministerial Declaration on the Occasion of the 60th Anniversary of the Universal Declaration of Human Rights, participating States reiterated that everyone has the right to freedom of peaceful assembly and associations.

Although OSCE participating States have, on various occasions, reiterated that they shall respect the right to freedom of peaceful assembly and association, the freedom of assembly and association is under threat in many regions in the OSCE area, including Greece. Although, most of non-governmental organizations generally operate without interference from the authorities, some ethnic minorities in Greece face serious limitations in the use of their right to freedom of association.

There are currently no associations in Greece operating legally with their names including the words "Macedonian" or "Turkish" to reflect the ethnic or national identity of their members. There is only one (ethnic) Macedonian association that attempted to register with the courts, the "Home of Macedonian Civilization" (Stegi Makedonikou Politismou). The association was denied registration and appealed to the European Court of Human Rights (ECtHR). In 1998, the Court ruled that Greece

violated Article 11 of the European Convention on Human Rights. However, "Home of Macedonian Civilization" has not been able to register for over years. The new application was again rejected in December 2003 on the ground that "the word 'Macedonian'–defining the culture to be preserved –implies that this culture is something particular and self-contained, so that it is not clear whether the word is being used in its historical sense to refer to an integral part of Greek civilisation with its local specificities, or in its geographical sense, in which case it is left undefined which part of the broader region of Macedonia is meant, as its territory took shape after the Balkan Wars."

The government does not confer official status on any indigenous ethnic group nor recognize "ethnic minority" or "linguistic minority" as legal terms, it affirms an individual's right of selfidentification, not right of collective self-identification by members of an ethnic or linguistic group. The government considers the 1923 Treaty of Lausanne as providing the exclusive definition of minorities in the country and defining their group rights, recognizes only a "Muslim minority." The Greek government continues to place legal restrictions on the names of associations of nationals who self-identify as Turkish.

The three Turkish associations were dissolved simultaneously with Home of Macedonian Civilization in 1986. The government, which declared in 1983 that there were no Turks in Greece, claimed that the members of Muslim minority are Greek Muslims. Xanthi Turkish Union, Komotini Turkish Youth Union and Western Thrace Turkish Teachers' Union were dissolved in 1986 by local courts and the Supreme Court decided the dissolution of the associations on the ground that the word "Turkish" referred to citizens of Turkey and could not be used to describe citizens of Greece.

In 1996, the Greek courts rejected an application for registration by "Evros Prefecture Minority Youth Association" on the ground that the Treaty of Lausanne recognized only a Muslim, and not a Turkish, minority in Western Thrace. The courts found that the title of the association was confusing, creating the impression that nationals of a foreign country, and in particular Turkish nationals, were permanently resident in Greece and that the association they had set up was not aimed at serving the interests of the Muslim minority in Evros. The applicants challenged the decision rejecting their application before the Greek courts, but their application was dismissed. The applicants lodged a complaint before the ECtHR in 2005, the Court, in 2007, in the case of Bekir Ousta and Others v. Greece (no. 35151/05) held unanimously that there had been a violation of Article 11.

On March 27, 2008, the ECHR notified in writing its Chamber judgments in the case Tourkiki Enosi Xanthis and Others v. Greece (no. 26698/05). The Court held unanimously that there had been a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights in both cases, which concern associations founded by persons belonging to the Muslim minority of Western Thrace (Greece). In the case of Xanthi Turkish Union, the ECtHR also held, unanimously, that there had been a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention.

On the basis of the European Court's decision, the applicants in the case of Xanthi Turkish Union and Others introduced two separate claims currently pending before the national courts which seek the annulment of the earlier decision that ordered the dissolution, but they were rejected. The Court of Appeal noted that an annulment or revision of a final domestic judgment in the framework of a non-contentious procedure does not extend to a judgment of the European Court under the Code of Civil Procedure (Article 758§1). In March 2012, the Greek Supreme Court rejected the appeal filed by the Xanthi Turkish Union.

On 25 August 2011, former PASOK MP for Xanthi, Mr. Çetin Mandacı submitted a motion for question to the Greek Parliament and asked the Ministry of the Interior, Decentralization and Electronic Governance and the Ministry for Justice, Transparency and Human Rights what the Government of Greece planned to do on the ECtHR's judgment in the case of Xanthi Turkish Union, and whether Greece had an intention to grant the Minority with right to establish associations which bear the word "Turkish" in their titles. In its written reply (12-9-2011,Protocol no.743) to the

motion for question asked by Deputy Cetin Mandacı (Protocol Number. 21855/25.8.2011), the Minister's Office of the Ministry for Justice, Transparency and Human Rights noted that the Government of Greece had completely fulfilled its obligations arising from Article 46 of the European Convention of Human Rights. Although the ECtHR awarded the association Xanthi Turkish Union 8.000 euros in respect of non-pecuniary damage in violation of Article 6(1) of the European Convention of Human Rights, the Government of Greece has not paid yet the amount mentioned above to the association on the basis of Xanthi Turkish Union officially closed in 1986 and is not officially registered now. With regard to the applicant association's claim which seeks annulment of the earlier decision No.31/2002, which confirmed the decision no. 36/1986 that ordered the dissolution of Xanthi Turkish Union before the Thrace Court of Appeal, the Minister's Office noted that the ECtHR's judgment did not constitute a cause for change in the national jurisprudence in respect to the judicial matter brought before the national court and in particular the interpretation of the laws. The Minister's Office further claimed that the ECtHR's judgments did not constitute, per se, a cogent factor for an application seeking for annulment or revocation of the national court's judgment on the basis of new facts or a change in the circumstances in which the judgment had been handed down.

On 27 March 2008, the ECtHR held unanimously in the case of Emin and Others v. Greece (application no. 34144/05) that there had been a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights. In the case of Emin and others, on the basis of the European Court's judgment, the applicants again applied for registration of the association before the national courts. A hearing was held at the Court of First Instance of Rodopi on 08/04/2009. The Court of First Instance of Rodopi, rejected the application on the ground that it was introduced by a lawyer who did not belong to the Bar of Rodopi. The Greek authorities confirmed that the application was rejected as inadmissible. Under the terms of the Code of Civil Procedure and Code of Lawyers, claims lodged before civil courts must be signed by a lawyer belonging to the bar of the geographical jurisdiction of the court. If not, the lawyer must jointly sign the claim with a colleague of the Bar from the geographical area of the court. Since in the present case, the claim was only signed by the applicants' lawyer who belongs to the Xanthi Bar, the applicants' request was rejected.

In the case of Bekir-Ousta and others, on the basis of the ECtHR's judgment, the applicants applied again for registration of the association in the national courts. On 09/12/2008, the Single Member Court of First Instance of Alexandroupoli (judgment No. 405/2008) rejected the application as in-admissible on the ground of *res judicata*. The decision referred in particular to the fact that under national law, retrial of a case further to a finding of a violation by the European Court is foreseen only for criminal proceedings (Article 525% of the Code of Criminal Procedure) but not for civil ones. The applicants appealed to the Court of Appeal of Thrace. The Court of Appeal of Thrace, by a decision made public on 31/07/2009, also rejected the application.

Council of Europe Execution of Judgments of the European Court of Human Rights undertakes the final judgments of the European Court of Human Rights and the Committee of Ministers supervises the execution process in Greece under the name of the Bekir-Ousta Group- the cases of Bekir-Ousta and Others (no. 35151/05), Emin and Others (no. 34144/05) and Tourkiki Enosi Xanthis and Others (no. 34144/05). Lately, on 2 December 2011, the Committee of Ministers of the Council of Europe examined the cases of Bekir-Ousta and Others, Emin and Others, and Tourkiki Enosi Xanthis and Others in the light of recent developments. Under the Bekir-Ousta group of cases against Greece, the Committee of Ministers referred to the letter sent by the Federation of Western Thrace Turks in Europe (ABTTF) to the Department for the Execution of Judgments of the European Court of Human Rights (ECtHR) on 3 November 2011 and decided to resume the examination of these cases in the light of the developments with regard to the proceedings pending before the Supreme Court in the case of Tourkiki Enosi Xanthis. There is a further problem that associations which bear the title "Minority" are not being registered in Greece, although the ECHR ruled that Greece violated the freedom of association of Evros Minority Youth Association in the case of Bekir- Ousta and Others vs. Greece (No. 35151/05). On 9 December 2008, the First Instance Court of Alexandroupolis rejected the application of the Evros Minority Youth Association to be registered within the framework of relevant ECHR decision on the ground that the decisions of ECHR are not obligatory regarding the Greek domestic law and they do not necessarily require the Greek authorities to register the association. The second case is that the Alexandropolis Civil Court of First Instance in March 2009 dismissed the request for registration of South Evros Minority Educational and Cultural Association on the ground that the word "minority" in its title had a vague meaning and the Thrace Court of Appeal upheld that decision on 13 December 2009. During the hearing before the Supreme Court on 7 October 2011, the association objected to the negative decision of the local court. On 13 January 2012, the Supreme Court admitted the appeal of the South Evros Minority Educational and Cultural Association and decided the case to be handled before the Thrace Court of Appeal. The third case is that the request for application of the Evrenköy Minority Culture, Folklore and Education Association is dismissed by Civil Court of First Instance in Komotini on 13 April 2011, on the ground that the word "minority" in its title was specified neither as "Muslim" nor as "Turkish".

Recalling the Greek Constitution that all Greeks are equal before the law and that all persons possessing the qualifications for citizenship as specified by law are Greek citizens and Greeks shall have the right to form non-profit associations and unions, we urge Greek Government to guarantee the effective enjoyment of the Turkish Minority of Western Thrace its right to freedom of association without discrimination of any kind and fully execute or enforce ECtHR's judgments to ensure that its obligations are fulfilled in practice.

We recommend that all OSCE participating States should create an environment, including a legal framework, in which individuals can exercise their right to association, without any kind of discrimination and ensure their legislation regulating the activities of NGOs is in conformity with OSCE and other international commitments.

We recommend OSCE/ODIHR to establish a Panel of Experts on Freedom of Association which would monitor the situation in the OSCE region and develop a framework in relation to commitments and obligations regarding freedom of association enshrined in international and regional human rights treaties.

We recommend OSCE/ODIHR, in cooperation with the Venice Commission and the Department for the Execution of Judgments of the ECtHR of Council of Europ, to prepare Guidelines on Freedom of Association.