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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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SESSION II: Non-discrimination and the freedoms of peaceful assembly and association

SUPPLEMENTARY HUMAN DIMENSION MEETING ON FREEDOMS OF PEACEFUL ASSEMBLY AND ASSOCIATION, WITH EMPHASIS ON FREEDOM OF ASSOCIATION 16-17 April 2015

Dear Moderator,
Distinguished Representatives
And NGO Representatives,

The OSCE participating States have committed in the 1990 Copenhagen Document that persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. The participating States committed in the Copenhagen Document that they will respect the rights of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection of the identity of such minorities.

The right to freedom of assembly and association of national minorities is a prerequisite of open and democratic societies. Though, restrictions and limitations on the right to freedom of association are still persistent in many OSCE States, especially in Greece. Unfortunately, a favourable environment is not created for the exercise of freedom association by means of laws and practices consistent with OSCE commitments and international standards.

Under the 1923 Lausanne Peace Treaty, Turkish Minority of Western Thrace has an equal right with the non-Muslim minority in Turkey to establish, manage and control at their own expense, any charitable, religious and social institution, any school and other establishment for instruction and education, with the right to use their own language and to exercise their own religion freely therein. However, Greece does not subscribe to the right to self-identification on a collective basis and the right of association of the Turkish Minority of Western Thrace is not respected by the Greek State.

Although some other groups are recognized and even welcomed and supported by Greek authorities, there are currently no associations in Greece operating legally with their names including the word “Turkish”, which reflect the ethnic or national identity of their members. The Greek government declared in 1983 that there were no Turks in Greece and 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.

There are three cases which have been brought before the European Court of Human Rights concerning the dissolution and refusal to register associations established by the persons belonging to Turkish Minority of Western Thrace, Greece:

35151/05 Bekir-Ousta and others, judgment of 11/10/2007, final on 11/01/2008

26698/05 Tourkiki Enosi Xanthis and others, judgment of 27/03/2008, final on 29/09/2008

34144/05 Emin and others, judgment of 27/03/08, final on 01/12/2008

These cases concern the dissolution or refusal to register the applicant associations by the competent courts on the sole basis of a suspicion that the applicants intended to promote the idea that an ethnic minority existed in Greece. On March 27, 2008, the ECtHR notified in writing its Chamber judgments in the cases of Emin and Others v. Greece (application no. 34144/05) and Tourkiki Enosis 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. In the case of Tourkiki Enosis Xanthis and Others 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.

The European Court noted that the contested measure rested only on a simple suspicion concerning the true intentions of the founders of the association and concerning the actions that the association might pursue once it began to operate. The European Court also noted that even if the real aim of the associations was to promote the idea that an ethnic minority existed in Greece; this could not in itself constitute a threat to a democratic society.

Further to the European Court of Human Rights’ judgments, the applicants requested the cancellation of the decision dissolving them (the case of Xanthi Turkish Union) or submitted a new registration of their associations before the national courts. The applications have been declared inadmissible on the ground that it is not possible to cancel a domestic decision which has become final in the context of non-contentious procedure following a judgment of the ECtHR, and that domestic law does not provide, in civil matters, for the reopening of proceedings following a finding of violation by the ECtHR. The Court of Cassation also dismissed on procedural grounds the applicants’ appeals in cassation in the cases of Bekir-Ousta and others and Emin and others.

In note verbal dated 29 May 2013¹ from the Permanent Mission of Greece to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights in relation to the written statement dated 10 May 2013 and submitted by the Federation of Western Thrace Turks in Europe (A/HRC/23/NGO/35), Greece noted that full implementation of the judgments is pending, due to procedural reasons. Greece noted that

¹ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/142/72/PDF/G1314272.pdf?OpenElement>

Greek authorities are currently considering the most appropriate means and ways to implement the decisions, including possible legislative adjustments. We regret that although the Greek authorities note that other avenues are being explored including an amendment to the non-contentious procedure provided in the code of civil procedure in every platform, the authorities have failed to take any precise and concrete step. Given the time that has elapsed since the Court's judgments, we believe that the Greek authorities are, in fact, unwillingness to implement the Court's decisions.

Council of Europe's Committee of Ministers closely follows the developments about the implementation of Court's judgments under the name of Bekir-Ousta group of cases against Greece since 2008. At 1172nd meeting (4-6 June 2013), and the Committee of Ministers had noted with concern that, since the judgment of the Court of Cassation (No. 353/2012), published on 24 February 2012, dismissing the appeal in cassation of the Tourkiki Enosi Xanthis association on procedural grounds, to date no precise and concrete information had been presented to the Committee on the measures taken or envisaged regarding the individual measures in this group of cases, noted with interest the information provided during the meeting according to which other avenues are being explored, including an amendment to the non-contentious procedure provided in the code of civil procedure.²

At the execution held on 5 December 2013(1186th meeting), the Committee of Ministers urged the Greek authorities to provide in due time, in order to enable its examination at their meeting of June 2014, concrete and tangible information on the measures that they are currently exploring in order to implement the individual measures, accompanied by an indicative calendar for their adoption.³ According to the statement issued on 5 January 2015, the European Court of Human Rights (ECtHR) will rehear the cases of Bekir Ousta and others (35151/05), Emin and others (34144/05) and Turkish Association of Xanthi and others (26698/05). This statement means that Greece will be re-judged by the ECtHR on the basis of its non-compliance with the three court rulings in 2007 and 2008.

Decisions of ECtHR are not implemented although seven year time elapsed, and Greece did not ratify the Council of Europe's Framework Convention for the Protection of National Minorities. ABITF urges Greek Government to implement, without any further delay, the decisions of the European Court in the cases Turkish Association of Xanthis and Others v. Greece, Bekir Ousta and Others v. Greece & Emin and Others v. Greece; and reaffirm the commitment of the Greek authorities to implementing fully and completely the judgments of ECtHR and amend the Code of Civil Procedures in such a way that it allows the implementation of the European Court decisions in matters related to freedom of association.

²http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=35151/05&StateCode=GRC&HideClones=1&SectionCode=ENHANCED%20SUPERVISION&OrderBy=FinalOn

³[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH\(2013\)1186/10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/OJ/DH(2013)1186/10&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864)