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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Federation of Western Thrace Turks in Europe, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2021]

* Issued as received, in the language(s) of submission only.



Violation of freedom of association due to the refusal to register associations with the word “Turkish” in Greece and the pending implementation of judgments of the European Court of Human Rights

Effective participation in public affairs includes the right of freedom of association. States should respect the rights of persons belonging to national minorities to effective participation in public affairs, including participation in affairs relating to the protection of identity of such minorities.

Greece ignores evidently its commitment regarding the right to freedom of association as the associations established by the persons belonging to the Turkish community in Western Thrace. As an autochthonous national minority group, Greece only recognizes Muslim minority in Thrace based on 1923 Lausanne Treaty and denies existence of an ethnic Turkish minority. There is no official information provided in Turkish in the region, because the government only recognized a religious minority, with the official use of the term as the Muslim minority in Thrace.

The ethnic Turkish identity of the minority is not recognized and associations which bear the word “Turkish” in their titles were dissolved in 1986 and are not registered since then, although the Turkish community had been active with its associations bearing the word Turkish for about half a century without hindrance.

Associations whose names include the words “Pomak” and “Roma” are registered in Greece, but those ones with the word “Turkish” are denied registration. No “Turkish” associations are permitted. Even, some associations with the word “minority” in their names were not allowed on the grounds that this implies an ethnic Turkish minority. Due to non-recognition of ethnic Turkish identity of the minority in the region, Turkish language is not used in any official documents, including official correspondences in the existing Turkish-Greek bilingual minority schools in their communication to their own students or governmental authorities.

The European Court of Human Rights (ECtHR) ordered in 2007 and 2008 that there is a violation of the right to freedom of association (Article 11) in the three applications in *Bekir-Ousta and others group of cases v. Greece* which concern violations of the right to freedom of association due to the domestic courts’ rulings not to register associations (*Bekir-Ousta and Others*, and *Emin and Others*) and a decision leading to the dissolution of an association (*Tourkiki Enosi Xanthi and others*) on the ground that their aim was to promote the idea that an ethnic Turkish minority existed in Greece. The Court recalled that Greek legislation (Article 12 of the Constitution and Article 81 of the Civil Code) did not set up a system of preventive control for the establishment of non-profit associations and concluded that the impugned measure was disproportionate to the aim pursued.

From 2008 onwards Greek authorities have encouraged the applicants to apply to have their cases re-examined on the basis of Article 758 of the Code of Civil Procedure or lodge new applications on the basis of Article 778 of the same Code (DH-DD(2012)1022, DH-DD(2013)452). According to the authorities (DH-DD(2013)452), Articles 758 and 778 of the Code of Civil Procedure introduced exceptions to the principle of *res judicata* since a) judgments issued in non-contentious proceedings would now be susceptible to review when new actual facts or a change in the conditions under which the decision was issued took place, and b) filing of a new application would now be possible when it was based on new facts.

Since Law 4491/2017 amending Article 758 did not have retroactive effect, a transitional provision was added, with the intention of enabling the applicants in the present cases to request reopening. However, Law 4491/2017 has introduced new restrictions that the admissibility of an application of revocation or amendment following an ECtHR judgment to be issued in the future is subject to the terms and restrictions provided in the relevant provisions 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.

After adoption of Law 4491/2017, Thrace Court of Appeal declared inadmissible the application of Xanthi Turkish Union in 2018 and the applications of the other two applicants in 2020 for the re-opening of proceedings and ordered that there is no possibility of the re-opening of proceedings on grounds that applicants have already filed applications, with a similar content, with a request for the re-opening of their cases after ECtHR's judgment. The transitional provision of the Law 4491/2017 amending Article 758 of the Code of Civil Procedure was considered by the court to apply only for those cases for which the applicants had not until 2017 filed applications for reopening of their domestic cases under the older version of Article 758 of the Code of Civil Procedure.

To this day, applications of the three associations have still not been re-examined by domestic courts on their merits in the light of the Court's case law twelve years after ECtHR's judgments. The outcome of the proceedings before the Court of Cassation in Xanthi Turkish Union after the hearing on 16 October 2020 is being awaited. And, the date of hearings for the cases of Minority Youth Association of Evros Prefecture at the Court of Cassation have been set for 18 March 2022.

The Council of Europe's Committee of Ministers closely follows the developments about the implementation of the Court's judgments on these Bekir-Ousta cases since 2008 and consequently decided to resume consideration of these cases when re-opened proceedings are delivered under the mentioned law adopted in October 2017. In its latest decision of September 2020 (DH-DD (2020)773)¹, the Committee noted that the "applicants' efforts to obtain a re-examination of the impugned registration decisions were rejected by the domestic courts on procedural grounds both before and after the change in the law in 2017 (which introduced a new possibility to the applicants to request reopening of the proceedings)". The Committee asked Greece to provide the Committee with information on the steps taken and in particular the outcome of the domestic proceedings as soon as possible, with a progress report by the end of October 2020, and decided to resume examination of these cases in March 2021 at the latest.

There is another refusal for registration of a newly formed Cultural Association of Turkish Women in the Prefecture of Xanthi. Their request for registration was rejected in 2017 by a final judgment of the Court of Cassation. This association applied to ECtHR on 10 July 2018, the admissibility is being awaited from the Strasbourg Court. In the decision of the Ministers' Deputies on 25 September 2019, the Deputies noted with deep regret that registration of another association in the Thrace region was rejected in 2017 by a final judgment of the Court of Cassation on grounds already criticized by ECtHR in its 2008 judgments concerning the present case.²

The resolution 2358 (2021)³ on the implementation of ECtHR judgments adopted by the Parliamentary Assembly of the Council of Europe on 26 January 2021 noted that Greece is among the countries having the highest number of non-implemented Court judgments before the Committee with structural or complex problems, some of which have not been resolved for over ten years as it is the case in the Bekir-Ousta group. In the report drafted by Constantinos Efstathiou on the implementation of ECtHR judgments⁴, it is noted that the judgments concerning violations of the right to freedom of association resulting from Greek authorities' refusal to register associations promoting the idea of the existence of an ethnic minority as distinct from the religious minorities recognised by the 1923 Treaty of Lausanne (Bekir-Ousta group) remains unimplemented for more than eleven years. The report refers to the decision of the Committee of Minister in September 2019 in which the Committee urged the authorities to rapidly take all the necessary individual and general measures.

¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809f6262.

² https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168097afe2.

³ <https://pace.coe.int/en/files/28996/html>.

⁴ <https://pace.coe.int/en/files/28658/html>.

Federation of Western Thrace Turks in Europe remains deeply concerned over non-execution of the three judgments in the Bekir-Ousta group of cases. This issue has been very politicized over the years and has been perceived to be an issue of national sovereignty. We strongly believe that non-implementation of the Strasbourg Court's judgments is due to deeply rooted problem of denial of ethnic Turkish identity of the Minority in the region with the lack of necessary political will at the national level, and might be due to open disagreement with ECtHR's judgment at the judiciary.

Because Greek authorities did not take any measures as regards the reopening of the three cases in the Bekir-Ousta group on merits, we urge the Greek government to ask the Court of Cassation to set new dates for the hearings in 2021, in compliance with the Committee of Ministers' Decision in September 2020.

Due to the fact that there has been no tangible progress with this totally ineffective procedure of re-opening the proceedings in civil matters, we urge Greece to take legislative measures to change the procedure for registration of associations in light of the findings of ECtHR in this group of cases.
