



# General Assembly

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## Human Rights Council

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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 the 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.

[13 February 2012]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **The freedom of association of the Turkish minority of western Thrace and the problem of implementation of EctHR's judgments in Greece**

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities grants to persons belonging to minorities the right to establish and maintain their own associations (Article 2.4). However, the restrictions and limitations on the right to freedom of association are still persistent in many Member States, including Greece.

Although the 1923 Treaty of Lausanne states that the Turkish Minority of Western Thrace shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, Greece does not subscribe the right of the Turkish Minority to self-identification on a collective basis and denies the right of association of the Minority which seeks to determine their identity.

On March 27, 2008, the European Court of Human Rights (ECtHR) notified in writing its Chamber judgments in the cases of *Emin and Others v. Greece* (application no. 34144/05) and *Tourkiki Enosis Xanthi 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 (Turkish) minority of Western Thrace (Greece).

Further to the ECtHR's judgments on 27 March 2008, the applicants requested the cancellation of the decision dissolving them (the case of *Tourkiki Enosis Xanthi and Others*) or submitted a new registration of their associations (the cases *Bekir-Ousta and Others* and *Emin and Others*) before the national courts. Though Greece expresses its commitment to the implementation of the judgments of the ECtHR, there are three judgments about the freedom of association of the Turkish Minority of Western Thrace, of which domestic proceedings are still pending at the domestic courts.

In the case of *Tourkiki Enosis Xanthi and others*, on the basis of the European Court's finding of a violation regarding the dissolution of the applicant association, the applicants introduced two separate claims currently pending: one before the Court of First Instance of Xanthi, seeking annulment of its earlier decision No. 36/1986 ordering the dissolution; and one before the Court of Appeal of Thrace, seeking annulment of its earlier decision No. 31/2002 confirming the decision No. 36/1986. Regarding the first claim, the Court of First Instance of Xanthi (judgment No. 12/2009 published on 30/04/2009) rejected the application on the basis of *res judicata*. Concerning the second claim, the hearing before the Court of Appeal of Thrace was scheduled for 03/04/2009. The application was rejected by a decision published on the 18/08/2009 for reasons similar to those adduced in the decision of the Court of Appeal of Thrace in the case of *Bekir-Ousta and others*. In the present case, the Court of Appeal noted that the possibility, under the Article 758§1 of the Code of Civil Procedure, of an annulment or revision of a final domestic judgment in the framework of a non-contentious procedure, on the basis of new facts or a change in the circumstances in which the judgment had been handed down, does not extend to a judgment of the European Court.

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 inadmissible 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§5 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.

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.

There is a further problem that associations which bear the title "minority" are not being registered in Greece, although the ECtHR ruled that Greece violated the freedom of association of the Evros Prefecture 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 Alexandropolis rejected the application of the association to be registered within the framework of relevant ECtHR decision on the ground that the decisions of ECtHR were not obligatory regarding the Greek domestic law and they did 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 Greek Court of Cassation on 7 October 2011, the association objected to the negative decision of the local court. On 13 January 2012, the Court of Cassation admitted the appeal of the 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 was 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".

The Council of Europe Execution of Judgments of the European Court of Human Rights undertakes the final judgments of the ECtHR 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 (Application No. 35151/05), Emin and Others (Application No. 34144/05) and Tourkiki Enosis Xanthis and Others (Application 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 (Application No. 35151/05), Emin and Others (Application No. 34144/05) and Tourkiki Enosis Xanthis and Others (Application No. 34144/05) 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 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 Court of Cassation in the case of Tourkiki Enosis Xanthis.

In its written reply (12-9-2011, Protocol no.743) to the motion for question asked by MP Çetin Mandacı (Protocol Number. 21855/25.8.2011) in which the MP asked for the steps that the Government was going to take about the ECtHR's judgment on the Xanthi Turkish Union, the Ministry for Justice, Transparency and Human Rights stated that there was no

need to annul or to rectify the judgment of national courts in the case of Xanthi Turkish Union on the basis of new facts or a change in the circumstances in which the judgment had been handed down. The Ministry replied that the Supreme Court of Appeal was going to give a final and conclusive decision on whether an annulment or revision of a final domestic judgment in the framework of a non-contentious procedure upon the judgment of ECtHR's decision.

Reminding the Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms on binding force and execution of judgments that the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties, we urge the Government of Greece to:

- Respect and fully comply with judgments of the European Court of Human Rights (ECtHR) concerning Greece and guarantee the right of the Turkish Minority of Western Thrace to freedom of association,
- Recall the firm commitment of the Greek authorities to implementing fully and completely the judgments of ECtHR,
- Immediately ratify the Council of Europe's Framework Convention for the Protection of National Minorities.

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