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**Human Dimension Implementation Meeting (Warsaw, 29 September - 10 October 2008)**  
**Working session 5: Tolerance and non-discrimination I (national minorities)**

1 October 2008

**Greece: Written contribution on ECtHR finding violations of Turks' freedom of association**

**Greek Helsinki Monitor (GHM)** welcomes two very important judgments published on 27 March 2008 by the **European Court of Human Rights (ECtHR)** and regrets that Greece has requested since then their referral before the Grand Chamber (the related procedure is pending). The ECtHR ruled that Greece violated the freedom of association of the country's Turkish minority, by dissolving the "**Turkish Association of Xanthi**" established in 1927, after a 21-year procedure (1983-2005), and by refusing the registration of the "**Cultural Association of Turkish Women of the Region of Rodopi**" after a four-year procedure (2001-2005). In both cases, Greek courts found objectionable the use of the word "Turkish" in the title to denote the ethnic identity of a minority which is recognized by Greece only as a religious "Muslim" and not as an ethnic "Turkish" minority. In the judgments, the Court made reference to its related case law that includes similar judgments on non-recognized minorities: *Bekir-Ousta and others v. Greece*, (one more case on the Turkish minority); *United Macedonian Organization Ilinden and others v. Bulgaria* and *Stankov and United Macedonian Organization Ilinden and others v. Bulgaria* (three cases on the Macedonian minority); *Ouranio Toxo and others v. Greece* and *Sidiropoulos and others v. Greece* (two cases on the Macedonian minority). GHM recalls (see its release <http://cm.greekhelsinki.gr/index.php?sec=194&cid=3268>) that a week ago the ECtHR published the communication to the Macedonian government of another related case on the Bulgarian minority, *Association of citizens "Radko" and Vladimir Paunkovski v. the former Yugoslav Republic of Macedonia*. The three countries -Bulgaria, Greece and Macedonia- rival each other in denying the existence of minorities perceived as "sensitive" to their national interest. From yesterday's judgment (whose press release follows), GHM highlights the core argument condemning those states' non-democratic attitude towards ethnic minorities whose existence is a historical fact:

*"The Court observed that even supposing that the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to democratic society. It reiterated that the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law. The Court also considered that it could not be inferred from the factors relied on by the Thrace Court of Appeal that the applicant association had engaged in activities contrary to its proclaimed objectives. Moreover, there was no evidence that the president or members of the association had ever called for the use of violence, an uprising or any other form of rejection of democratic principles. The Court considered that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country."*

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Press release issued by the Registrar

CHAMBER JUDGMENTS

EMIN AND OTHERS v. GREECE

TOURKIKI ENOSI XANTHIS AND OTHERS v. GREECE

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830261&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

The European Court of Human Rights has today notified in writing its Chamber judgments in the cases of *Emin and Others v. Greece* (application no. 34144/05) and *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 *Tourkiki Enosi Xanthis and Others* the Court 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.

Under Article 41 (just satisfaction) of the Convention, the Court held that the finding of a violation constituted in itself just satisfaction for the non-pecuniary damage suffered by the applicants in the case of *Emin and Others*. In the case of *Tourkiki Enosi Xanthis and Others* the Court awarded the association Tourkiki Enosi Xanthis 8,000 euros (EUR) in respect of non-pecuniary damage. (The judgments are available only in French.)

### 1. Principal facts

Both cases concern complaints by the applicants about decisions taken by the Greek courts against associations founded by persons belonging to the Muslim minority of Western Thrace (Greece).

#### *Emin and Others*

The seven applicants, Houlia Emin, Aisse Galip, Feriste Devetzioglou, Mediha Bekiroglou, Aisse Molla Ismail, Eminent Mehmet Ahmet and Gioulsen Memet, are Greek nationals living in Rodopi (Greece).

In March 2001 they and other women from the region founded the “Cultural Association of Turkish Women of the Region of Rodopi”. According to the statute of the Association, its aim was to create a “meeting place for women of the county of Rodopi” and to work for “social, moral and spiritual exaltation and establish bonds of sisterhood between its members”.

On 6 June 2001 the Greek courts dismissed a request for registration of the association on the ground that its title might mislead the public regarding the origin of its members. The Court of Appeal upheld that decision in January 2003, reiterating that by virtue of the Treaty of Lausanne only a Muslim minority – and not a Turkish minority – had been recognised in the region of

Western Thrace. The Court of Appeal held that the title of the association, combined with the terms of its statute, was contrary to public policy. An appeal on points of law by the applicants was dismissed in April 2005.

### ***Tourkiki Enosi Xanthis and Others***

The applicants are two associations, Tourkiki Enosi Xanthis and “Academic Graduates’ Circle of the minority in Western Thrace”, and eight Greek nationals: Galip Galip, Ahmet Mehmet, Orhan Hatzibraim, Ahmet Faikoglou, Birol Akifoglou, Loutfie Nihatoglou, Hiousniou Serdarzade, Rassim Hint.

The first applicant association, Tourkiki Enosi Xanthis, was founded in 1927 under the name “House of the Turkish Youth of Xanthi”. According to the statute of the association, its purpose was to preserve and promote the culture of the “Turks of Western Thrace” and to create bonds of friendship and solidarity between them.

In 1936 the applicant association successfully sought to change its name to “Turkish Association of Xanthi”. In November 1983, however, a decision was issued prohibiting it from using the term “Turkish” on any document, stamp or sign.

On 11 March 1986 the Greek courts ordered the dissolution of the association on the ground that its statute ran counter to public policy. The Thrace Court of Appeal upheld that judgment on 25 January 2002. It found that the applicant association was not in conformity with the Treaty of Lausanne and that some of the members presented the Muslim minority of Thrace as a “strongly oppressed minority”. The court referred, among other things, to the president of the association’s participation in conferences organised by the Turkish authorities and the publication of a letter in a Turkish daily referring to the “Turks of Western Thrace”. In April 2002 the first applicant association appealed on points of law and subsequently the nine other applicants also intervened in the proceedings in support of Tourkiki Enosi Xanthis. The appeal was finally dismissed in February 2005.

## **2. Procedure and composition of the Court**

The application in the case of *Emin and Others* was lodged with the European Court of Human Rights on 19 September 2005 and in the case of *Tourkiki Enosi Xanthis and Others* on 15 July 2005.

Judgments were given by a Chamber of seven judges, composed as follows:

Nina **Vajić** (Croatian), *President*,  
Khanlar **Hajiyev** (Azerbaijani),  
Dean **Spielmann** (Luxemburger),  
Sverre Erik **Jebens** (Norwegian),  
Giorgio **Malinverni** (Swiss),  
George **Nicolaou** (Cypriot), *judges*,  
Petros **Pararas** (Greek), *ad hoc judge*,

and also Søren **Nielsen**, *Section Registrar*.

### 3. Summary of the judgment

#### Complaints

Relying in particular on Articles 11 (freedom of assembly and association) and 14 (prohibition of discrimination), the applicants in the case of *Emin and Others* complained of the Greek courts' refusal to register their association and the applicants in the case of *Tourkiki Enosi Xanthis and Others* of the court-ordered dissolution of the association Tourkiki Enosi Xanthis. In the case of *Tourkiki Enosi Xanthis and Others* the applicants also complained, under Article 6 § 1, of the excessive length of the proceedings.

#### Decision of the Court

In respect of *Tourkiki Enosi Xanthis and Others*, the Court declared the complaints based on Articles 11 and 14 admissible only regarding the association Tourkiki Enosi Xanthis and the following applicants: Orhan Hatziibraim, Ahmet Faikoglou, Birol Akifoglou, Loutfie Nihatoglou, Hiousniou Serdarzade, Rassim Hint. It declared the complaint based on Article 6 § 1 admissible only in respect of Tourkiki Enosi Xanthis.

#### Article 11

##### *Emin and Others*

Whilst reiterating that the taking of evidence was governed primarily by the rules of domestic law and that it was in principle for the national courts to assess the evidence before them, the Court was not satisfied that the Greek courts had based their finding that the association constituted a danger to public policy on the title "Cultural Association of Turkish Women of the Region of Rodopi" alone. It observed that it had not been possible to verify the intentions of the applicants in practice as the association had never been registered.

The Court observed that even supposing that the real aim of the association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to democratic society. There was nothing in the statute to indicate that its members advocated the use of violence or of undemocratic or unconstitutional means. The Court noted further that the Greek courts would have had the power to dissolve the association if in practice it pursued aims that were different from those stated in its statute or if it operated in a manner contrary to the law.

Accordingly, the Court held, unanimously, that there had been a violation of Article 11.

##### *Tourkiki Enosi Xanthis and Others*

The Court referred at the outset to the radical nature of the measure dissolving the applicant association. It noted that the association had pursued its activities unhindered for nearly half a century. Furthermore, the Greek courts had not identified any element in the title or statute of the association that might be contrary to public policy.

The Court observed that even supposing that the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to democratic society. It reiterated that the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law.

The Court also considered that it could not be inferred from the factors relied on by the Thrace Court of Appeal that the applicant association had engaged in activities contrary to its proclaimed objectives. Moreover, there was no evidence that the president or members of the association had ever called for the use of violence, an uprising or any other form of rejection of democratic principles. The Court considered that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country.

Accordingly, the Court held, unanimously, that there had been a violation of Article 11.

#### Article 14 in conjunction with Article 11

In both cases the Court held that it was not necessary to examine separately the applicants' complaints based on Article 14 taken in conjunction with Article 11.

#### Article 6 § 1

The Court noted that, in respect of the applicant association *Tourkiki Enosi Xanthis*, the proceedings in question had lasted more than 21 years. Having regard to the circumstances of the case, it considered that that was excessive and failed to satisfy the "reasonable time" requirement.

Accordingly, it held, unanimously, that there had been a violation of Article 6 § 1.

The Court's judgments are accessible on its Internet site:

#### ***Tourkiki Enosi Xanthis and Others***

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830307&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

#### ***Emin and Others***

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830309&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

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