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Date: 14/10/2019

DH-DD(2019)1152

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Meeting: 1362nd meeting (December 2019) (DH)

Communication from the applicant (08/10/2019) in the case of HOUSE OF MACEDONIAN CIVILIZATION AND OTHERS v. Greece (No. 1295/10) (appendices in Greek are available at the Secretariat upon request)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1362^e réunion (décembre 2019) (DH)

Communication du requérant (08/10/2019) relative à l'affaire HOUSE OF MACEDONIAN CIVILIZATION ET AUTRES c. Grèce (requête n° 1295/10) (des annexes en grec sont disponibles auprès du Secrétariat sur demande) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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The President of the Committee of Ministers

Department for the Execution of Judgments of the European Court of Human Rights

Council of Europe

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7 October 2019

Execution of House of Macedonian Civilization and others v. Greece (Application No. 1295/10)

Mr President

Under Rule 9(1) of the Rules of the **Committee of Ministers** for the supervision of the execution of **ECtHR** judgments we submit the attached communication by applicants whom we represented before the **ECtHR** and are representing before the **Committee of Ministers** on the execution of *House of Macedonian Civilization and others against Greece (Application No. 1295/10)*, and request that it is also uploaded at your special website for the 1362nd DH meeting (3-5 December 2019).

Yours faithfully

Panayote Dimitras

Executive Director of Greek Helsinki Monitor and applicants' representative

**Applicants' communication on the execution of
*House of Macedonian Civilization and others against Greece (Application No. 1295/10)***

7 October 2019

A. Information from the CoE CM-DH website

Case Description: The case concerns the refusal of the Greek authorities to register the association "House of Macedonian Civilisation" on the grounds that the use of the word "Macedonian" and the purpose proclaimed in the association's statutes contravened public order and jeopardized the harmonious coexistence of the population of the Florina region.

Status of Execution: [Preliminary information submitted \[15/11/2016\]](#): action plan/report awaited

As it is stated in [the ECtHR judgment](#) "*Les requérants ont été représentés par une organisation non-gouvernementale, le Greek Helsinki Monitor*" which continues to represent them before the **CM-DH**.

B. Historical overview

Round one

As mentioned in the 10 July 1998 **ECtHR** judgment in the case of [Sidiropoulos and Others v. Greece](#), *“On 18 April 1990 the applicants, who claim to be of “Macedonian” ethnic origin and to have a “Macedonian national consciousness”, decided together with forty-nine other people to form a non-profit-making association (somatio) called “Home of Macedonian Civilisation” (Stegi Makedonikou Politismou). The association’s headquarters were to be at Florina.”* Their registration was refused by domestic courts including the **Court of Cassation** on 16 May 1994.

On 10 July 1998, the **ECtHR** *“concluded that the refusal to register the applicants’ association was disproportionate to the objectives pursued. That being so, there has been a violation of Article 11.”* The **ECtHR** noted that the national courts had refused to register the association because *“the national courts held that the applicants and the association they wished to found represented a danger to Greece’s territorial integrity. That statement, however, was based on a mere suspicion as to the true intentions of the association’s founders and the activities it might have engaged in once it had begun to function.”*

On 24 July 2000, the **Committee of Ministers**, with [Resolution DH \(2000\) 99](#), closed the supervision of the implementation of that judgment because of the following commitment of the Greek government: *“The Government of Greece is of the opinion that, considering the direct effect today given to judgments of the European Court in Greek law ..., the Greek courts will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case.”*

Future developments showed that the commitment was not sincere but simply aimed, successfully as it turned out, to get the **Committee of Ministers** to close the supervision: Greek courts were to subsequently, time and again, reject “the direct effect” and to commit the same “judicial errors” hence preventing to this day the registration of the applicant.

Round two

As mentioned in the 9 July 2015 **ECtHR** judgment in the case of [Maison de la Civilisation macédonienne et autres c. Grèce](#) *“Le 19 juin 2003, les requérants ... décidèrent de créer à nouveau avec d’autres personnes l’association la «Maison de la civilisation macédonienne» (Στέγη Μακεδονικού Πολιτισμού), la première requérante. Le siège de l’association fut fixé à Florina... Selon les requérants, les références dans les statuts de l’association à la civilisation et la langue «macédoniennes» étaient conformes à l’arrêt Sidiropoulos et autres, précité.”* Their registration was again refused by domestic courts including the **Court of Cassation** on 17 September 2009.

On 9 July 2015 the **ECtHR** again *“conclut que le refus d’enregistrer l’association en cause a été disproportionné par rapport aux buts légitimes retenus par les juridictions internes. Il y a donc eu violation de l’article 11 de la Convention.”* The **ECtHR** noted that the national courts had refused to register the association *“en se fondant plus ou moins sur la même ligne de raisonnement que celle adoptée par elles dans l’affaire Sidiropoulos et autres (arrêt précité). En particulier, la cour d’appel de la Macédoine de l’Ouest, après avoir fait une longue analyse de la «question macédonienne», est arrivée à la conclusion que les termes «Macédoine slave» ou «nation macédonienne» n’avaient aucune réalité. En se fondant sur ces conclusions, confirmées ensuite par la Cour de cassation, la cour d’appel a notamment conclu à l’absence «de civilisation ou de langue macédoniennes». Elle a considéré que les statuts de l’association requérante et l’emploi du terme «macédonien» pourraient provoquer la confusion au sein du pays quant à l’identité de l’association et perturber l’ordre public. En premier lieu, la Cour note que les buts de l’association requérante mentionnés, de manière générale, dans ses statuts pouvaient difficilement porter à eux seuls atteinte à l’ordre public. Il est*

opportun sur ce point de rappeler que dans son arrêt Sidiropoulos et autres, précité, la Cour a déjà considéré que «à supposer même que les fondateurs d'une association comme celle de l'espèce se prévalent d'une conscience minoritaire, le Document de la Réunion de Copenhague de la Conférence sur la dimension humaine de la CSCE (chapitre IV) du 29 juin 1990 et la Charte de Paris pour une nouvelle Europe du 21 novembre 1990 – que la Grèce a signés du reste – autorisent ceux-ci à créer des associations pour protéger leur patrimoine culturel et spirituel » (Sidiropoulos et autres, précité, § 44)... Or, dans ce cas, elles auraient aussi dû prendre en compte la jurisprudence pertinente de la Cour, qui favorise l'enregistrement d'une association et non pas le contrôle préalable de sa légalité, lorsque le droit interne prévoit des clauses permettant le suivi de son activité a posteriori (voir, entre autres, Emin et autres c. Grèce, no 34144/05, § 31, 27 mars 2008). Ainsi, concernant l'état du droit interne en l'espèce, à supposer que des actions concrètes susceptibles de porter atteinte à l'ordre public en Grèce se seraient confirmées après l'enregistrement de l'association requérante, les autorités nationales ne se trouveraient pourtant pas désarmées: en vertu de l'article 105 du code civil, le tribunal de grande instance pourrait ordonner la dissolution de l'association requérante si elle poursuivait un but différent de celui fixé par ses statuts ou si son fonctionnement s'avérait contraire à la loi, aux bonnes mœurs ou à l'ordre public (voir Sidiropoulos et autres, précité, § 46).”

Whereas the **Committee of Ministers** was able in 2000, that is within two years after the first **ECtHR** judgment, to close supervision based on an ostensibly satisfactory government declaration, today, four years after the second judgment, the **Committee of Ministers** has effectively not started the supervision, as the Greek government makes every effort to delay it. The action report/action plan due within six to nine months after the judgment became final, hence the latest by July 2016, has not been submitted to date, that is a full four years after the final judgment. It is probably the worst such record for any state, and certainly for **Greece**. The government had instead merely submitted some [preliminary information on 15 November 2016](#), that a mechanism and a legal remedy were being planned. **It is regrettable that the absence of an action plan or report was never submitted to the Committee of Ministers at any of the DH meetings in the three years since. On the contrary, when perhaps such issue was to be raised in the March 2019 DH meeting, the Committee of Ministers “decided to examine the case of House of Macedonian civilization and others v. Greece at their 1362nd meeting (December 2019) (DH)”. Greece has therefore successfully managed to avoid scrutiny by failing to submit an action plan/report for a protracted period of time until now, two months before its December 2019 scheduled examination by the Committee of Ministers: to quote a former Commissioner for Human Rights, “Greece was getting away with murder” again and again...** The applicants hope that the present communication will compel Greece to submit and action plan or action report, with replies to the specific concerns and recommendations listed below.

Round three

On 27 July 2017, the **House of Macedonian Civilization** applied for registration with the **District Court of Florina (Tribunal de Paix - Ειρηνοδίκη)**. On 5 November 2017, in [a communication to the Committee of Ministers](#), GHM attached the **District Court of Florina Judgment 16/2017** (in Greek) by which the **House of Macedonian Civilization** was again refused recognition on 11 September 2017, despite the two **ECtHR** judgments finding **Greece** in violation of freedom of association. **GHM**, the applicants' representative, commented therein that this is a violation of [the Greek Government's submission to the CM in 2000](#), after the first **ECtHR** judgment in 1998, alleging “the exceptional nature of the case,” committing that “the Greek courts will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case” and concluding that “accordingly, the Government of Greece is of the opinion that it has complied with its obligations under Article 53 of the Convention.” The **CM** is already aware that, on the contrary, the Greek courts refused the registration of that association after the first **ECtHR** judgment which led to a second **ECtHR** judgment in 2015, [for the execution of which the CM awaits an action plan/report](#), after [an effectively “empty” submission to the CM in 2016](#). The **Florina court** based its 2017

judgment on the domestic case law, i.e. the two previous refusals of recognition of that association. The **Florina court** included lengthy quotes from these judgments arguing that there is no **Macedonian nation**, no **Macedonian culture**, no **Macedonian language**, and no **Macedonian minority**; hence, the aim of the association is contrary to public order and security, endangering the institutions of the **Greek State**. The **Florina court** argued that the **ECtHR** judgments do not penetrate the Greek legal order and hence cannot annul the domestic court judgments: hence, the “direct effect” of **ECtHR** judgments **Greece** claimed before the **DH** in 1998 was in effect indeed a mere “diplomatic” yet successful effort to help close the first supervision. The **Florina court** added that the previous domestic judgments were issued not only because the aims of the association were a threat to public order and security but also “*to protect the rights and freedoms of others, protected by Article 8 ECHR,*” which rights, the **Florina court** claimed, were not taken into consideration by the **ECtHR**. The **Florina court** finally stated that the situation concerns a sensitive issue of cultural identity and is thus similar to the ban to wear the burqa that the **ECtHR** upheld in *S.A.S. v. France*.

The **Florina court**’s main arguments came directly from the legal opinion of **Ioannis Dimitrakopoulos Associate Councillor of the Hellenic Council of State** (Symvoulío tis Epikrateias – that is the Supreme Administrative Court of Greece), published in September 2015, in his specialized website www.humanrightscaselaw.gr with the title “*The ECtHR’s context of appreciation for the respondent state’s margin of appreciation and ‘minority’ cultural rights: the invisible side of the Case of the House of Macedonian Civilization et al. v. Greece*”. His main argument, also invoked in the **Florina Court** judgment: “*If the ECtHR’s methodologically sound control oversight, in the modern context of enhanced subsidiarity, allows the burqa to be excluded from French society as incompatible with some of the latter’s rather vague, cultural value, it is reasonable to assume that the exclusion of ‘Macedonian’ associations from Greek society as incompatible with the hard core of its national and cultural identity is justified in principle (and indeed a fortiori).*” [Please note the inverted commas ‘...’ used by the supreme court judge for the words ‘minority’ and ‘Macedonian’ which is telling...].

The **Florina Court** also invoked three **Court of Cassation** judgments related to cases of minority associations refused registration or dissolved by the Greek courts whose judgments were found by the **ECtHR** to be in violation of the **ECHR**.

First, the **Florina Court** invoked judgment [1471/2013](#) rejecting an application by the “*Bekir-Ousta*” association for the cassation of the second rejection of its application to register after the first **ECtHR** judgment in its favour. The **Court of Cassation** “*considérait que les arrêts rendus par la Cour ne pouvaient pas infiltrer le droit interne et entraîner la suppression automatique de l’acte étatique à l’origine du constat de violation de la Convention*” belying **Greece**’s aforementioned claim before the **Committee of Ministers** that such judgments have a direct effect.

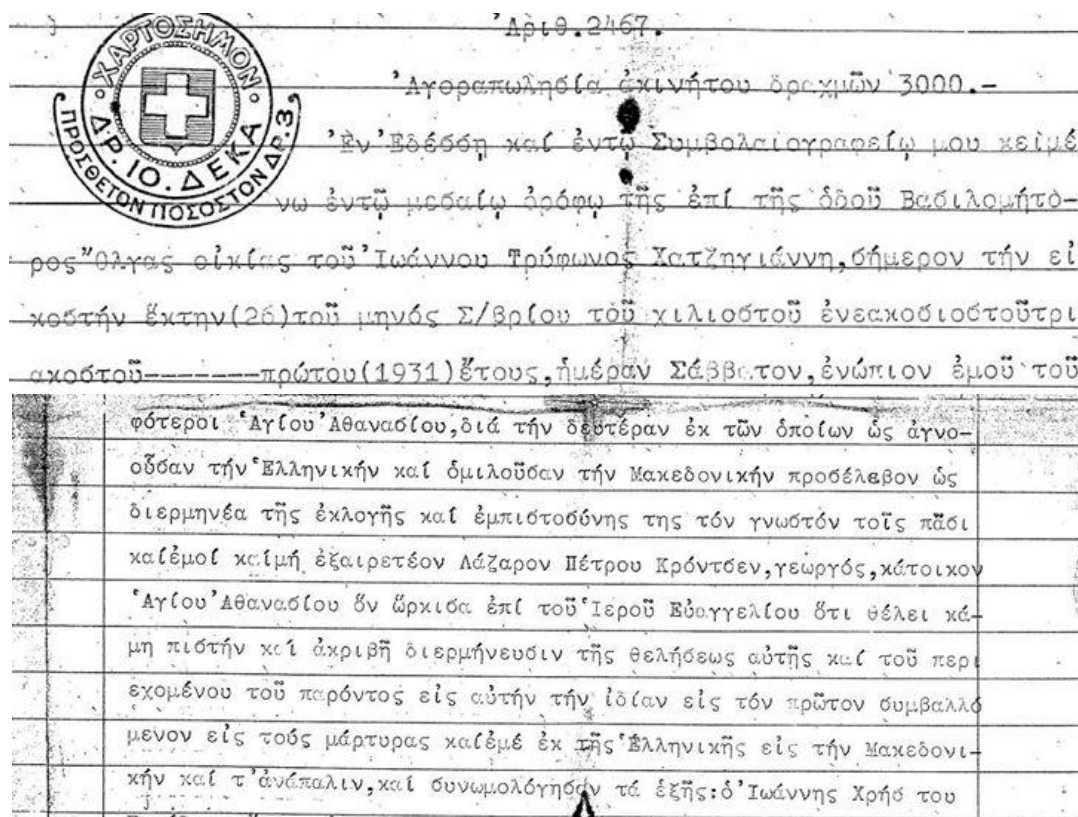
Secondly, the **Florina Court** invoked judgment [4/2005](#) rejecting an application by the “*Tourkiki Enosi Xanthis*” association for the cassation of its dissolution which led to the subsequent **ECtHR** judgment against Greece. The **Court of Cassation** had ruled that “*les buts de l’association ainsi que ses activités étaient contraires à l’ordre public et que, par conséquent, la mesure de dissolution était nécessaire.*” By quoting this judgment the **Florina Court** repeated the “*judicial error that was at the origin of the violation found in this case*” belying **Greece**’s aforementioned claim before the **Committee of Ministers** that this would be prevented.

Thirdly and most importantly, the **Florina Court** invoked judgment [1448/2009](#) rejecting the second application by the “*House of Macedonian Culture*,” that is the present applicant, for the cassation of the second rejection of its application to register after the first **ECtHR** judgment in its favour. The **Court of Cassation** had then invoked the **ECtHR** judgment *Gorzelik and Others v. Poland* 94: “*Freedom of association is not absolute, however, and it must be accepted that where an association, through its activities or the intentions it has expressly or implicitly declared in its programme, jeopardises the State’s institutions or the rights and freedoms of others, Article 11 does not deprive the*

State of the power to protect those institutions and persons. This follows both from paragraph 2 of Article 11 and from the State's positive obligations under Article 1 of the Convention to secure the rights and freedoms of persons within its jurisdiction." This is quoted in full by the **Florina Court**. By quoting this judgment the **Florina Court** again repeated the "judicial error that was at the origin of the violation found in this case" belying **Greece's** aforementioned claim before the **Committee of Ministers** that this would be prevented.

However, there is one argument both in the legal opinion and in the **Florina Court** judgment that has since become very crucial: "the type of interference in question does not exclude the establishment of the association with a name and statutes compatible with the aims pursued, e.g. referring to the language and culture of the nation of F.Y.R.O.M." However, since the ratification of the **Prespes Agreement** on 12 June 2018 **Greece** recognizes its neighbour as **North Macedonia** (and no longer FYROM – Article 1.3.a), its language as **Macedonian language** (Article 1.3.c), and its culture as **Macedonian culture** (Article 7.3). Hence, "the name and statutes compatible with the aims pursued, referring to the **Macedonian language** and the **Macedonian culture** of **North Macedonia**" is evidently that of some "**Macedonian association**" which in the applicants' case is "**House of Macedonian Civilization**." Official Greek documents are now mentioning the name of **Macedonian language**: for example, in the Official Gazette dated 14 February 2019, the **Greek Intelligence Service (EYP)** published a call for 56 interpreters – translators – listeners, 4 of which for "**Macedonian (southernslavic) language**"

The applicants would like to highlight that their language and culture has always been called **Macedonian**, something that the Greek state was recognizing in the past, then has been denying it for some decades, and has finally recognized again. They have scores of official documents, especially notarized contracts on property sales, mentioning that, as one or both of the parties did not speak **Greek** but **Macedonian**, interpreters between the two languages were appointed. Here is the relevant extract of one such contract signed in Edessa in 1931:



Related developments

1. The **Committee of Ministers** is aware that the Macedonian minority association *House of Macedonian Civilization* faces almost identical implementation problems with the three Turkish minority associations of the group *Bekir-Ousta v. Greece*, also refused registration or dissolved: the three related 2008 **ECtHR** judgments have not been implemented, just as the 1998 and 2015 two *House of Macedonian Civilization* judgments have not been implemented.
2. The **Committee of Ministers** in its September 2019 [decision](#) on *Bekir-Ousta and Others group v. Greece* also “noted with deep regret that the registration of another association in the Thrace region was rejected in 2017 by a final judgment of the Court of Cassation on grounds already criticised by the European Court in its 2008 judgments concerning the present case.”
3. The **Committee of Ministers** is requested to likewise note that in the same month, on 10 September 2019, the **First Instance Court of Serres** with its judgment 185/2019 [original judgment in Greek attached] decided to dissolve the “*Brotherhood of Natives from Serres: Cyril and Methodious*” (Adelfotita Dopion Serraiou: Kyrillos kai Methodios). That association had been registered with decision 10/2017 of the **District Court of Sinitki (Serres)**. Soon after, neo-nazi **Golden Dawn MP Ilias Panayotaros** tabled [a question in Parliament](#) on 13 March 2019 and then [a complaint to the Prosecutor of the Court of Cassation](#) on 19 March 2019: the latter was sent by the **Prosecutor of the Court of Cassation** to the **Prosecutor of Serres**. The **Prosecutor of Serres** first opened a criminal file against the association board members which it archived and then in January 2019 filed an opposition (anakopi) against the registration, which was accepted by the **First Instance Court of Serres**. The court held that the term “Natives” in the title of the association referred to speakers of a Macedonian language, which was misleading and confusing as the Natives of Serres and more generally of Macedonia according to the court have been speaking since ancient times the Greek language. It was moreover a threat to public order and security and to peaceful coexistence as well as a violation of the rights of others (who believe otherwise) as it also implied that all “natives” of Serres are Macedonian speakers. The **Committee of Ministers** is requested to note that the Serres Bar Association made a third-party intervention in favour of the dissolution of the association. Hence, to paraphrase its aforementioned decision, “the Committee of Ministers should note with deep regret the registration of another association in the Macedonia region was rejected in 2019 by a national court on grounds already criticised by the European Court in its 1998 and 2015 judgments concerning the present case.”

Absence of effective remedies

In theory, the **House of Macedonian Civilization** could have filed an opposition (anakopi) to 2017 the **Florina District Court** judgment within two years from its publication on 11 September 2017. However, the association considered that this was not an effective remedy as there was no chance that the **First Instance Court of Florina** would ignore the aforementioned case law that included several **Court of Cassation** judgments so as to consider that the **ECtHR** judgments have a direct effect and that the association is not a threat to public order and national security. The only result would have been a third round of rejections which though could not have led to another application to the **ECtHR** as the latter has ruled for the *Bekir-Ousta* associations that as long as there is no new information and the implementation of the previous judgment are examined by the **Committee of Ministers** it has no competence to examine new applications.

Likewise, the association felt that the amended article 758 of the Code of Civil Procedures was not an effective remedy either, as it was expressly applicable to applicants that were not considered as threats to public order and national security. During the related parliamentary debate, it was made clear that this amendment would not apply to Turkish and Macedonian minority associations. It is indicative that in the only case that has been litigated on the basis of this new legal provision, after an application by

the **Turkish Union of Xanthi**, as is mentioned in the [CM Notes](#) “Le 8 mars 2018, l’ONG Greek Helsinki Monitor a informé le Comité que l’avocat qui représentait la région de Macédoine orientale et de Thrace dans cette procédure avait plaidé en faveur du rejet de la demande, sur la base des arguments critiqués par la Cour.” The national court in that case rejected the application for re-opening without even examining its merits: “Le 22 juin 2018, la Cour d’appel de Thrace a rejeté la requête au motif que la demande violait le principe ne bis in idem, car les requérants avaient déjà demandé en 2008, en vertu de l’article 758 du Code de procédure civile, en vigueur au moment des faits, l’annulation de la décision de justice validant la dissolution de leur association. En outre, la disposition législative transitoire modifiant l’article 758 du Code de procédure civile ne s’appliquait pas dans cette affaire : une disposition spécifique aurait dû être incluse pour s’appliquer aux requérants ayant déjà demandé la réouverture sur la base de l’article 758 du Code de procédure civile, tel qu’il était rédigé avant modification.”

Remedies available to the State

There is one other remedy, the application for the cassation of the above judgment for the benefit of the law (Article 557 of the Code of Civil Procedure) that the government can and should use in this case as it did in the execution of the **ECtHR** judgment in *Chowdury and others v. Greece*. The **Supreme Court Prosecutor** issued then [the following related press release](#) (translated in English by **Greek Helsinki Monitor** - GHM):

Prosecutor at the Court of Cassation

Press Release 30-10-2018

The Prosecutor at the Court of Cassation considered that the judgment of the Mixed Jury Court of Patras, No. 75-128/30-7-2014, according to which the accused in the case were declared innocent of the crime of trafficking in human beings and the direct aiding and abetting repeatedly and as a profession, was in violation of Article 4 (2) of the ECHR, as the European Court of Human Rights has also ruled, assigned to the Deputy Prosecutor at the Court of Cassation Charalambos Vourliotis to file an application for the cassation of the above judgment for the benefit of the law.

Thereafter, the Deputy Prosecutor, today, on 23 October 2018, filed an application for the cassation of that decision for the benefit of the law, for wrong interpretation and wrong application of the provision of Article 323A of the Penal Code, and for lack of specific and detailed reasoning. This remedy seeks to correct the mistaken assumptions of that Court of Justice, to ensure the unity of the case-law and to prevent the legal views referred to in the abovementioned decision from being repeated and consolidated.

On 18 June 2019, the **Court of Cassation’s Plenary** with judgment [2/2019](#) accepted the application and annulled the national court’s ruling on the trafficking charges that had caused the finding of a violation by the **ECtHR** in that case. It took a mere eight months for this procedure to be completed.

Recommendations

1. The **Committee of Ministers** is urged to recommend to the government to request the **Prosecutor at the Court of Cassation** to file an application for cassation of the **District Court of Florina Judgment 16/2017**. If successful, it will annul that judgment and also remove from the case law the aforementioned previous **Court of Cassation** judgments invoked by national courts to challenge the direct effect of **ECtHR** judgments and to claim that the **House of Macedonian Civilization** is a threat to public order and national security. Manifestly, the **Court of Cassation** should/will take into consideration that, with the **Prespes Agreement**, Greece has recognized the **Macedonian language** and **Macedonian culture** which put to rest

claims that the use of the word **Macedonian** in the association's title contravenes public order and jeopardizes the harmonious coexistence of the population of the Florina region. After such a **Court of Cassation** judgment, the **District Court of Florina** will be compelled to register the **House of Macedonian Civilization**. If that recommendation is followed, the **House of Macedonian Civilization** will be registered by the end of 2020.

2. The **Committee of Ministers** is urged to also recommend to the government as an alternative that Greece should follow the example of **North Macedonia** and **Bulgaria** which replaced the court registration of associations with **ECHR**-compliant government registration authorities that simply examine the formal requirements for registration (such as the address of the association, the names of its founding members, its statute etc.), as general measures in the execution of the **ECtHR** judgments [*"Association of Citizens Radko and Paunkovski v. North Macedonia"*](#) (a Bulgarian minority association) and [*United Macedonian Organisation Ilinden and Others v. Bulgaria*](#) (Macedonian minority associations). Such change of legislation does not require more than a few months and perhaps a couple of months to set up the new authority. Hence, if that recommendation is followed the **House of Macedonian Civilization** will be registered by the summer of 2020.
3. The **Committee of Ministers** is requested to note that in 2020 the **House of Macedonian Civilization** will have completed thirty (30) years of efforts to register in Greece and hence it deserves with the help of the **Committee of Ministers** a successful outcome.