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

Communication from a NGO (Greek Helsinki Monitor) (21/10/2019) (English only) and reply from the authorities (29/10/2019) (French only) in the SAKIR group of cases v. Greece (Application No. 48475/09).

Information made available under Rules 9.2 and 9.6 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 d'une ONG (Greek Helsinki Monitor) (21/10/2019) (anglais uniquement) et réponse des autorités (29/10/2019) (français uniquement) dans le groupe d'affaires SAKIR c. Grèce (requête n° 48475/09).

Informations mises à disposition en vertu des Règles 9.2 et 9.6 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



GREEK HELSINKI MONITOR (GHM)

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DGI

21 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

The President of the Committee of Ministers
Department for the Execution of Judgments of the European Court of Human Rights
Council of Europe - Strasbourg - France
DGI-execution@coe.int

19 October 2019

Execution of *Sakir group of cases v. Greece* (Application No. 48475/09)

Mr President

Under Rules 9(1) [as **Greek Helsinki Monitor** was the representative of the applicants in the *Gjikondi* case] and 9(2) of the Rules of the **Committee of Ministers** for the supervision of the execution of **ECtHR** judgments we submit the attached communication on the execution of *Sakir group of cases v. Greece* (Application No. 48475/09), 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
Greek Helsinki Monitor

Communication on the execution of *Sakir group of cases v. Greece* (Application No. 48475/09)

18 October 2019

1302nd meeting, 5-7 December 2017 (DH) - H46-12 Sakir v. Greece (Application No. 48475/09)
Supervision of the execution of the European Court's judgments - Decisions

The Deputies

1. invited the authorities to provide information about the developments concerning the reopening of the investigation into the assault against the applicant and the outcome thereof;
2. welcomed the adoption of new legislation enhancing penalties for hate crimes and facilitating proof of crime as hate-motivated crime; invited the authorities to provide information about the implementation of the new legislation, in particular whether racist motivation is examined in the early stages of criminal proceedings;
3. noted with interest the establishment of a mechanism for the development of policies against hate-motivated crimes and the appointment of special prosecutors tasked with the investigation of crimes; invited the authorities to provide information and data about the number of reports of hate-motivated crimes as compared to the number of cases in which criminal charges were brought and those in which the perpetrators were punished.

1. Reopening of the investigations related to the Gjikondi application and cassation of the [judgment](#)

The **Court**, in view of the gravity of the violations related to “*Les poursuites judiciaires menées à l’encontre des suspects («la procédure principale»)»*” which were sufficient to find a violation of Article 2 in its procedural limb, did not find it necessary to rule on the three other procedures for which the applicants alleged violations, some of a felony criminal nature, by police and judicial officials in various aspects of the investigations. It is necessary that, as in the *Sakir* case, these procedures are reopened. Moreover, the **Court of Cassation** has given the very good example on how domestic judgments whose failings have caused the violations found by the **Court** can be at least partly annulled for the benefit of the law, as happened with its [Penal Plenary Judgment 2/2019](#) related to the *Chowdury and others v. Greece* case. Finally, in the execution of the *Makaratzis group of cases* the **Agent of the Government** and the **Ombudsman** have suggested that when procedural failures cannot be investigated again because of prescription, the corresponding victims and successful applicants before the **Court** should be offered a written apology as a measure of moral compensation, [something that the CM-DH welcomed in its December 2018 meeting](#). **Greece** should do the same with the victim’s relatives in the present group of cases.

2. New legislation for hate crimes

In 2014, **Greece** amended its antiracism law 927/79 and contrary to its claims it decriminalized hate speech. This is an excerpt from **GHM et al.** submission to **UN CERD** in July 2016.

[Submission to UN CERD in 2016 on decriminalization of hate speech in 2014](#)

It is astonishing that [in its September 2015 report](#) to **CERD** Greece misleadingly claims that “114. As explained in Greece’s previous reports, Law 927/1979 ... criminalizes the expression in public, either orally or by the press or by written texts or through depictions or any other means, of offending ideas against any individual or group of individuals.” That was the content of old article 2 of Antiracism Law 927/79 penalizing hate speech against persons by virtue of their racial or ethnic origin or their religious affiliations. Such acts were prosecuted ex officio without the victims having to file a complaint. Victims could be any members of the ethnic or religious group offended. **However, that Article was abolished with Law 4285/10-9-2014, a whole year before the report to CERD was submitted!**

Moreover, during Greece’s review by the **Human Rights Committee** (HRCttee) in October 2015, the Greek delegation stated that victims of hate speech can alternatively now use the usual articles on libel and defamation with the addition of the new Article 81A of the Criminal Code on racist crimes. However, the crimes of libel and defamation cannot be prosecuted ex officio but victims have to file complaints which such vulnerable persons would rarely do, let alone that they have to pay court fees (of 150 euros) and engage lawyers. **Only for complaints based on anti-racism Law 927/79 is there an exemption from such court fees, while free legal aid is available only for very poor persons.**

Secondly, the articles on defamation and libel invoked punish such crimes if they are committed against individuals and not against groups of individuals, as there are no articles in the criminal code on group defamation or group libel. That means for example that if one insults another person who is a Rom saying “*you dirty Gypo*” the latter can file a complaint based on those articles. If however the offender said “*I do not like all those dirty Gypos*” there is no longer a crime to prosecute.

It should be taken into consideration that through 2015 there has been only one conviction under Law 927/79 that was upheld on appeal. It was based on old article 2 and the incriminating text was “*Thank God, not even 1,500 Jews are left in Thessaloniki...*” Such a text would not have reached even the indictment today as there is no individual libel or defamation in it. That case like 60+ other cases based on 927/79 had been taken to justice and litigated by **Greek Helsinki Monitor**.

Finally, it was unfortunate that the State claimed during its review by **HRCttee** that **ECRI** had welcomed the amended Law 927/29. Here is the crucial paragraph 4 of **ECRI**'s report published in January 2015:¹ *"Article 1.1 of Law 927/1979 criminalises the intentional public incitement to acts or activities that may result in discrimination, hatred or violence against individuals or groups based on their racial, national or ethnic origin, colour, religion, sexual orientation or gender identity. The creation or leadership of or participation in a group that promotes racism is banned by Article 1.4 of the law. While the law covers the recommendation contained in § 18 c of ECRI's General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination, which relates to racist threats, **it does not address those in §§ 18 b, referring to insults and defamation, or 18 f, concerning the public dissemination, public distribution or production or storage of racist material**"* [emphasis added].

The above information was included in a **GHM/MRG-G/HUG/SOKADRE** submission to **HRCttee** during Greece's review on 19 October 2015, to counter Greece's misleading claims. The attached ensuing related **HRCttee** concluding observation and recommendation² shared the concerns of **GHM/MRG-G/HUG/SOKADRE**: **CERD is requested to make a similar recommendation to Greece for the reintroduction of the prohibition and prosecution of of hate speech, also in line with CERD's own 2009 recommendations.**³

[HRCttee on] Racism and xenophobia

13. While acknowledging efforts made by the State party to combat hate crimes, the Committee is concerned that the new Law 4285/2014 and the provisions introduced in the Penal Code may hinder investigations and prosecutions of racist hate crimes involving public insults and defamation against groups. The Committee is also concerned about continued reports of racist attacks and hate speech against migrants, refugees and Roma. The Committee notes with concern that cases of racism are underreported allegedly due to lack of trust in the authorities and the absence of an effective complaints mechanism. The Committee regrets that sanctions imposed are insufficient to discourage and prevent discrimination (arts. 2, 19, 20 and 26).

14. The State party should review its legislation with a view to ensuring that all advocacy of national, racial or religious hatred is prohibited by law, and that all cases of racially motivated violence are systematically investigated, that the perpetrators are prosecuted and punished, and that appropriate compensation is awarded to the victims. The State party should take effective measures to improve the reporting of hate crimes. Furthermore, the State party should strengthen its efforts to eradicate stereotypes and discrimination against migrants, refugees and Roma, inter alia, by conducting public awareness campaigns to promote tolerance and respect for diversity.

Related concluding observations of UN CERD

On the basis of the material submitted by **GHM et al** UN CERD made the following observations:

Anti-racism legal framework

12. While noting with appreciation the positive aspects incorporated in the new anti-racism law No. 4285/2014, the Committee remains concerned that the new law is not fully compliant with the requirements of article 4 of the Convention, particularly as it does not criminalize the dissemination of ideas based on racial superiority and does not provide for a procedure to declare illegal and prohibit racist organizations. The Committee is also concerned at the persistence in the State party of the political party Golden Dawn, to which the delegation referred in its opening statement as the most prominent racist organization, inspired directly by neo-Nazi ideas (art. 4).

¹ <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf>

² <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhskVPFIQ4IoSDu8fUhvjkp83%2bgz9Yu3TlaU7Ad1dJcKE3MsrE%2bujXvG%2bjDUltLFd7BUOMINu59vm2Xu4tsWl%2bA9ME%2bUMKBo1EvOjhpwHe9ng>

³ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshHeRijq81EP%2b%2bIb%2feJjif8qVBWYzbcZtMnDQGpfU0cG9sERoEJ6XwL%2fx5VTbKBpPh9ykweVM10F5VmFTErOug4CK7WbTijvjlpGi34loYLAWEwq11w9ywde9DXVDw%3d%3d>

13. Recalling its general recommendations No. 7 (1985) and No. 15 (1993) relating to the implementation of article 4 of the Convention, the Committee recommends that the State party bring its anti-racism legal framework in full compliance with the requirements of article 4 of the Convention, and ensure its strict application. The State party should, inter alia, declare illegal and prohibit organizations that promote and incite racial discrimination, such as Golden Dawn, as previously recommended by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and by the Council of Europe Commissioner for Human Rights.

Implementation of anti-discrimination provisions

14. The Committee welcomes the information provided on the increased application of the anti-racist legislation in the State party by law enforcement authorities and in courts. It, however, remains concerned at the still low invocation and application of anti-racism legal provisions and the low rate of convictions in courts (art. 2).

15. The Committee recommends that the State party intensify its measures to strengthen the application of anti-racism provisions. To that end, the State party should:

(a) Increase the human, financial and technical resources allocated to law enforcement authorities entrusted with investigating hate and racial crimes, namely, the special prosecutors and special police units, and ensure these bodies' outreach throughout the country;

(b) Undertake awareness-raising measures, including regular mandatory pre-service and in-service training, especially among the police, prosecutors, judiciary and lawyers, on the legal framework governing anti-discrimination and on the investigation of complaints of hate crimes.

Greece should therefore amend the related legislation along the lines recommended by the three highest expert bodies in the **Council of Europe** and the **UN**. As for *“the still low invocation and application of anti-racism legal provisions and the low rate of convictions in courts”* it is confirmed by the data **Greece** provided to **CM-DH** and even more the data **GHM** has available: both are analysed below.

3. Data on prosecution of hate crimes

In its October 2019 [Action report concerning the Sakir group of cases](#) **Greece** provides data on complaints and prosecution of hate crimes that confirm **UN CERD**'s concern on *“the still low invocation and application of anti-racism legal provisions and the low rate of convictions in courts.”* In that data, **Greece** reports 2015-2017 368 complaints for alleged racist crimes, 127 criminal prosecutions, 19 convictions and 4 acquittals. It also reports an additional 421 complaints for 2018-2019 but fails to give any information on what happened to them. It also claims that in mid-2019 there were 220 court briefs with the PB (racist violence) signalization.

	Police data of complaints reported by Greece	PB court briefs at Athens Prosecutor for Racist Crimes	GHM complaints to Athens Prosecutor for Racist Crimes that led to opening of PB court briefs
2015	84	0	0
2016	100	10	3
2017	184	225	198
2018	247	118	63
2019	174	154	100 (218)*
PB	216	507	364 (482)*

* *PB2019/85 is assigned to a complaint with 119 separate cases that has yet to be itemized (to 119 separate PB complaints by the Athens Prosecutor for Racist Crimes that will bring the GHM total for 2019 to 218 and grand total for 2016-2019 to 482)*

GHM is the plaintiff in the vast majority of those cases, hence responsible for the “explosion” in the figures since 2017 and will provide an analysis here. The table above has police data for the whole country reported by **Greece**, and the “PB” court briefs with the **Athens Prosecutor for Racist Crimes** and then how many of them concern complaints filed by **GHM**. Obviously, there are scores of additional court briefs with Prosecutors outside Athens. Most result from **GHM** complaints first submitted to the **Athens Prosecutor for Racist Crimes** or to the specialized **Attica Police Security Department for Combatting Racist Crimes**, who transfer them to the Prosecutors outside Athens because they concerns acts in their areas. In the period from 2015 through mid-October 2019, **GHM** has filed complaints for 586 alleged racist crimes (482 in the table below with **Athens Prosecutor for Racist Crimes** “PB” signalization, and an additional 104 with different signalization in Athens or, mostly outside Athens). **The vast majority of these complaints are still at the hands of prosecutors; some led to archiving and a few to referrals to trials. GHM is collecting a large number of related decisions to be able to document these trends.**

We provide here indicative information on decisions to archive **GHM** complaints on alleged racist behavior issued by **Greece**’s supposedly most important anti-racism prosecutor accessed this week:

- [A 2018 article on criminality in Greece by a then Appeals Court Prosecutor and now Deputy Prosecutor at the Court of Cassation](#) where he stated inter alia that *“illegal immigrants and refugees constitute a population group with a high rate of serious criminality ... Greece, with the armies of hordes of destitute aliens, tends to become not only a dump of human souls, but, worst of all, a dangerous arena of multifaceted and upgraded crime.”* With **Decision 2907/5-9-2019** the **Athens Prosecutor for Racist Crimes** (who is also the National Point of Contact of OSCE/ODIHR on Racist Crimes for Greece and has recently been promoted to Deputy Appeals Court Prosecutor) archived the **GHM** complaint as not racist arguing that the article is an analysis of the weaknesses of the criminal system in Greece, adding that the entry to Greece without proper procedures of the tens of thousands of foreigners is a crime of the competence of the first instance courts, even though not one prosecutor in such courts ever pressed such charged.
- [A 2018 post by a leader of a marginal “liberal” party](#) claiming that *“being a Muslim is a penal crime.”* With **Decision 2615/5-8-2019**, the same prosecutor archived the **GHM** complaint as not racist but arguing that the post was a critical review of the principles of “Mahometanism” (term not used by the Muslims or the state in Greece...), with references to dogmas of that religion making its followers act in ways that constitute penal crimes like threat and constitution of criminal organization...
- [A 2018 speech by the Mayor of Aspropyrgos](#), a **Greater Athens** suburb with a significant Roma population, who spoke of *“the uncontrolled group of Roma that has been active in the region for several years cannot come to their senses... the daily behavior of this particular group, characterized by others as vulnerable, but whose racism against us we endure, while we are called racists, has continued to operate in our region for over 20 years.”* With **Decision 169/19-8-2019**, the same prosecutor archived the **GHM** complaint as not racist arguing that the Mayor did not refer to the Roma as a whole but to those Roma who engage in criminal activity and in fact repeatedly over the years, a claim that **GHM** states is at least unfounded recalling that Greece has been convicted twice for anti-Roma behavior (including school segregation) in that particular city led by its then Mayor.

In all three cases, the persons against whom the complaints were submitted were NOT asked to provide explanations as usually happens with complaints: the supposedly specialized prosecutor took upon herself to argue on their behalf so as to archive the complaints.

More generally, Athens Prosecutors for Racist Crimes are prosecutors who are assigned that duty in addition to their other duties for one year and change year after year. During the one-year term of the aforementioned prosecutor (2018-2019), she archived several cases (including the three mentioned above) but did not refer anyone to trial. On the contrary, her predecessor (2017-2018) referred to trial in 2019 and 2020 the following nine cases:

- An **extreme right newspaper** for [a front page article](#) with the title “*Transvestite Parliament – Beat all ‘sissies’ – this abortion of a law [on civil unions] was voted by 148 ‘perverts.’*”
- A **former Foreign Minister** who [said in a television interview](#) that “*The only good Turk is a dead Turk. I believe it because I haven't found a good Turk. They lack elementary knowledge. The Turk does not have a sense of the law.*”
- A at the time **member of the Political Committee of New Democracy** [who wrote in a post](#) that “*being gay, bi, and trans is a perversion and unnatural.*”
- The **leader of a marginal left party** [who wrote a conspiracy theory article](#) stating inter alia that “*[arriving] illegal immigrants are suspects for terrorist acts*” calling for a “*general rebellion.*”
- An **extreme right blog** which published [a hoax](#) alleging that “*Video shock: Pakistani fanatics declare jihad in Greece – small children are initiated in the use of weapons*” – the video is from a school play in the celebration of a Pakistani national day.
- A at the time **Deputy Minister of Education** [who said in a speech before Parliament](#) inter alia that “*with patience and perseverance Jews secured the ownership of the Holocaust so as to claim their vindication.*”
- An **extreme right columnist** and an **extreme right blog** who published in front pages [an article](#) with the title “*Parliament a Jewish Synagogue!!!*” when a commemorative plaque for inter-war Greek Jewish MPs victims of the Holocaust was inaugurated in Parliament.
- A **notorious author and self-professed Nazi** for [the manifesto of a new movement he founded](#) where he asked for “*the deportation of all Muslim minority members who identify as Turks.*”
- A front page article in **Golden Dawn’s youth publication** [with extreme anti-immigrant references and a call for violent action against them.](#)

Moreover, in the information provided by **Greece**, detailed reference is made to two court judgments, both though involving **GHM**. **Athens First Instance Court Judgment 1667/2018** concerns a **Golden Dawn** candidate who proffered on camera racist insults against Pakistani migrants. This was his conviction on appeal. In the first instance trial, two **GHM** lawyers had provided support for a Pakistani community leader as civil claimant. However, in the very end of that trial the civil claimant was thrown out as not personally offended. **Athens Mixed Jury Appeals Court Judgment 286/2019** was the conviction on appeal of two **Golden Dawn** members who had killed a Pakistani migrant, where **GHM** spokesperson was involved as a witness in the first instance trial to explain racist motivation. However, and contrary to the claims of the government, the judgment did not include the racist motivation because (as expressly stated in p. 110) the previous related article 79.3 PC had been abolished while the new Article 81A PC called for harsher sentencing and thus could not be used. In any case, the CM-DH should know that the two defendants had been convicted to life in prison sentences at the first instance trial. On appeal, though, they were convicted to a reduced prison sentence of 21 years and 5 months, as the court recognized the mitigating circumstance of good behavior after the act. Moreover, they have since been set free after having stayed in prison for 6 years and 4 months, because of several measures allowing such release on parole! Finally, as to the claims of **Greece** that the parents of the victim were informed and travelled to Greece and testified, all that was done by a group of volunteer lawyers of the **Jail Golden Dawn** collective who bore all the expenses.

Regrettably, several prosecutors do not use Article 81A (now 82A) on racist motivation even in blatant racist cases. **GHM** [referred in December 2018 to the Prosecutor of the Court of Cassation](#) two examples. In November 2018, six persons were convicted (to light sentences up to 15 years that triggered a prosecutor’s appeal) for the brutal murder of an African American tourist in Zakynthos. Although **GHM** had asked during the pre-trial procedure that the charges include racist motive, this was not done. In December

2018, an asylum seeker from Bangladesh was badly beaten with an iron bar by a resident in Lesbos: the case was not assigned to the Prosecutor for Racist Crimes of Lesbos and the charges did not include racist motivation. In the same letter, **GHM** informed the **Prosecutor of the Court of Cassation** that the **Athens Prosecutors for Racist Crimes** does not have an office and changes very year; that who is the **Piraeus Prosecutor for Racist Crimes** is not known even by members of the secretariat of that **Prosecutor's Office** when asked (by **GHM**) and that several court briefs on alleged racist crimes were assigned not to her but to all **Piraeus Prosecutors**; and that the same practice of assignment of complaints for racist crimes to various prosecutors occurs in the other 22 regional **Prosecutor Offices** despite the fact that in each one of them a **Prosecutor for Racist Crimes** is formally assigned that duty and all the 24 such names are in [a Prosecutor of the Court of Cassation list](#). No wonder than that even **Greece** in its [communication to CM-DH](#) on the *Sakir group of cases* makes reference to the appointment of just five **Prosecutors for Racist Crimes** and not to the 24 appointed such **Prosecutors**!

Finally, the problem is not just with prosecutors but also with judges that acquit defendants for notorious racist articles; in some cases these defendants are supported by calls for acquittal by prominent persons including a former EU Ombudsman and several academics. From the [“Islamophobia in Greece: National Report 2018”](#) written by two academic researchers:

In May 2018, the trial of a well-known author who wrote an Islamophobic text after the attacks of November 2015 in Paris took place in Athens after a lawsuit of the Greek Helsinki Monitor. The trial was to take place initially during 2017 but it was postponed. According to the charges she went on trial for violating the anti-racist law (4285/2014) and some articles of the penal code and more particularly for public incitement of violence and hatred. It should be noted that the author was supported by other authors and journalists arguing either that she has the right of freedom of speech or that she said nothing wrong because Islam is indeed a problem and not a moderate religion. The court acquitted her on all charges, a decision that, on the one hand, was considered as a victory of freedom of speech and opinion, and, on the other, as a victory of racist and Islamophobic discourse. What was also interesting and publicly commented on was the oration of the public prosecutor in which she argued that “the opinions the accused expressed are similar to the views that passed through our minds after the attack in Bataclan [Paris, 2015]. Her text is just an expression of opinion and it is impossible to satisfy the burden of proof that a crime was committed”. As some argued, such an oration coming from a judge proves that Islamophobia runs deep in Greek society on many different levels -something that needs to be addressed.

GHM quotes here selected excerpts from the incriminating text: *“Islam is not a religion like the other [religions], it is a political programme, it is an ideology of barbarisation... The militant Muslim is the person who beheads the infidel, while the moderate Muslim holds the feet of the victim.”*

A few years ago the aforementioned self-professed Nazi, initially convicted at the first instance trial, was acquitted on appeal, which was subsequently confirmed by the **Court of Cassation**, of racism charges for his book **“Jews – The whole truth”**. [Selected excerpts](#) by the **Central Board of Jewish Communities in Greece** *“I declare from the outset that I am a Nazi and a fascist, racist, anti-democratic and am an anti-Semite... That's the only thing Jews understand: an execution squad within 24 hours... Ridding Europe of the Jews is necessary because Judaism poses a threat to the freedom of Nations... I constantly blame the German Nazis for not ridding our Europe of Jewish Zionism when it was in their power to do so... And now the time has come for us to call the Jew by the name he deserves..... He is the sub-human Jew!... It is the fault of the civilized world that tolerates the international parasites that are called Jews... the time for retaliation has come... My book, which you are now reading, is simple proof that we are not afraid of the Jews. We scorn them for their morality, their religion, and their acts, which together prove that they are sub-human... Mark my words. This time there will be no kind German Nazis to gather up the Jews and send them to Madagascar, but Knights of the White Apocalypse. I imagine them galloping, swords unsheathed, on golden steeds of death... Free yourselves from Jewish propaganda that deceives you with falsehoods about concentration camps, gas chambers, ‘ovens’ and other fairy tales about the pseudo-holocaust...”* [The trial was held following a GHM complaint](#).

Recommendations to the Committee of Ministers on the execution of the Sakir group of cases v. Greece

The **Committee of Ministers** is requested to ask **Greece** to:

A. Individual measures concerning the Gjikondi case

1. Reopen the three other procedures for which the applicants alleged violations, some of a felony criminal nature, by police and judicial officials in various aspects of the investigations.
2. Request from the **Prosecutor of the Court of Cassation** to move for the annulment in part of the acquittal judgment for the benefit of the law.
3. Offer the relatives of the victim a written apology as a measure of moral compensation.

B. General measures

1. Amend anti-racism Law 927/79 so as to implement recommendations by **ECRI**, **UN HRCttee** and **UN CERD** to criminalize racist insults and defamation, and the public dissemination, public distribution or production or storage of racist material.
2. Intensify its measures to strengthen the application of anti-racism provisions, including through regular mandatory pre-service and in-service training, especially among the police, prosecutors, judiciary and lawyers, on the legal framework governing anti-discrimination and on the investigation of complaints of hate crimes.
3. Improve the data collection so that it reflects accurately the existing situation including an analysis by Prosecutor Offices and by nature of the charges pressed and of the crimes for which acquittals or convictions have been issued, as well as specify if they concern first instance judgments or are final upheld on appeal.
4. Cooperate with civil society organizations that file complaints for alleged racist crimes both in data collection and with membership in related working groups or national commissions for human rights or against racism (Note: **GHM** is not a member in either).
5. Request from the **Prosecutor of the Court of Cassation** to seek available remedies against archiving decisions or judgments that lead to non-prosecution or acquittals for manifestly evident racist crimes, as well as against the failure to invoke a racist motive when it is manifestly evident, even in convictions.
6. Set a 2020 deadline for the submission of information regarding the implementation of the above recommendations, taking into consideration the anticipated **ECRI** contact visit in 2020 for the preparation of **ECRI's** 6th cycle country monitoring report on **Greece**.



REPRESENTATION PERMANENTE DE LA GRECE
AUPRES DU CONSEIL DE L'EUROPE

Le Représentant Permanent

No de Réf. : 6702 / 1078

Strasbourg, le 29 octobre 2019

Objet : 1362^e réunion CM-DH. Exécution des arrêts du groupe d'affaires « Sakir ».
(Sakir c. Grèce, n° 48475/09, et Gjikondi c. Grèce, n° 17249/10).

Cher Monsieur Sundberg,

En vue de la prochaine réunion CM-DH, veuillez prendre en considération la communication des autorités helléniques ci-jointe.

Je reste, bien entendu, à votre disposition pour tout éclaircissement que vous pourriez souhaiter.

Je vous prie de bien vouloir agréer, cher Monsieur Sundberg, l'expression de ma considération distinguée.

Panayiotis Beglitis
Ambassadeur

M. Fredrik Sundberg
Chef du Service de l'exécution des arrêts
de la Cour européenne des droits de l'Homme

c/c : - M. Christos Giakoumopoulos
Directeur général des Droits de l'Homme
et Etat de Droit du Conseil de l'Europe

 **DGI Exécution**

**- Président du Conseil juridique de l'Etat/
Agent du Gouvernement hellénique
auprès de la CEDH**

Groupe d'affaires « Sakir »

Affaires Sakir c. Grèce (n° 48475/09) et Gjikondi c. Grèce (n° 17249/10)

(Arrêts du 24 mars 2016 et 21 décembre 2017, devenus définitifs le 24 juin 2016 et 21 mars 2018)

1. Dans le bilan de son action en date du 4 octobre 2019, le Gouvernement hellénique analyse les mesures individuelles et générales prises pour remédier aux violations constatées par la CEDH et demande au Comité des Ministres de bien vouloir clôturer la surveillance du groupe d'affaires « Sakir ».
2. Dans sa communication en date du 19 octobre 2019, GHM, invoquant sa capacité de représentant des requérants dans l'affaire *Gjikondi*, se réfère brièvement aux mesures individuelles quant à cette affaire et conteste l'efficacité des mesures générales exposées par le Gouvernement.
3. A nos yeux, à l'exception du paragraphe n° 1 et de la partie (A) des recommandations qui portent sur l'exécution de l'affaire *Gjikondi*, cette communication doit être qualifiée de communication provenant d'une organisation non gouvernementale et non pas de communication de la partie lésée. Qui plus est, il s'agit d'une communication qui, tant en ce qui concerne les mesures individuelles (I) qu'en ce qui concerne les mesures générales (II), dépasse de beaucoup la portée des arrêts du groupe d'affaire « Sakir ». Il ne s'agit donc pas d'une communication concernant l'exécution des arrêts du groupe « Sakir ».

I. Mesures à caractère individuel

4. Sur le plan des mesures à caractère individuel, GHM suggère au Comité des Ministres de demander la réouverture des procédures judiciaires internes au sujet de défaillances alléguées par les requérants sur lesquelles la CEDH n'a pas jugé nécessaire de se prononcer (§ 140). De l'avis de GHM, la procédure de cassation dans l'intérêt de la loi pourrait offrir aux requérants le redressement adéquat.
5. Ces propositions reposent sur des fausses prémisses. *D'une part*, le Comité des Ministres n'a pas pour mission de compléter les arrêts de la Cour mais d'en surveiller l'exécution. Par conséquent, au cas où la Cour n'aurait pas traité de violations alléguées, quelle qu'en soit la raison, il n'est pas question de réouverture des procédures judiciaires sur les questions y afférentes. *D'autre part*, la procédure de cassation « dans l'intérêt de la loi » ne produit pas d'effets à l'égard des parties litigantes (article 557 du Code de procédure civile). Elle ne constitue donc pas, par définition, une mesure individuelle susceptible de servir au redressement de la partie lésée. Dans ces circonstances, la mise en œuvre de la procédure de cassation dans l'intérêt de la loi équivaldrait à une dénaturation regrettable de cette voie de recours extraordinaire. Par ailleurs, la Cour de

cassation est appelée non à trancher sur le fond, mais à dire si, en fonction des faits qui ont été souverainement appréciés dans les décisions qui lui sont déférées, les règles de droit ont été correctement appliquées. Il s'en suit qu'il ne serait pas du ressort de la Cour de cassation d'enquêter sur l'agression mortelle dont a été victime le proche des requérants, ni sur la question de l'existence d'un mobile raciste des auteurs.

II. Mesures à caractère général

6. Sur le plan des mesures générales, il importe en premier lieu de délimiter les contours des arrêts du groupe « *Sakir* ». En effet, dans les arrêts du groupe « *Sakir* », la CEDH a conclu à la violation des articles 2 et 3 de la Convention en raison de défaillances dans les enquêtes menées à la suite d'agressions contre des migrants (violence raciste envers des migrants) et, notamment, en raison de l'omission des autorités policières et judiciaires d'enquêter sur l'existence d'un mobile raciste des auteurs, malgré la présence d'indices qui permettaient de soupçonner le caractère raciste des agressions en cause (*Sakir* § 72, *Gjikondi* 138 - 139).

7. En revanche, dans les arrêts du groupe « *Sakir* », la CEDH n'a pas abordé la question de discours de haine en Grèce, ni d'autres questions entrant dans le domaine thématique plus générale « du racisme et de la discrimination raciale », quel qu'en soit la valeur ou le bien atteint, comme le suppose le GHM dans sa communication. Dans ces circonstances, la communication de GHM et ses recommandations vont au-delà de la portée des arrêts de la Cour et ne devraient pas être prises en considération par le Comité des Ministres car susceptibles de le désorienter vers des questions qui n'ont pas fait l'objet d'un examen par la Cour, et, encore moins, l'objet de constatations de violations des articles 2 ou 3 de la Convention de la part de la Grèce.

8. Par ailleurs, la réunion DH du Comité des Ministres n'est pas le forum approprié pour répondre aux communications de GHM au Comité pour l'élimination de la discrimination racial et au Comité des droits de l'Homme de l'ONU. Le rôle du Comité des Ministres est de surveiller l'exécution des arrêts de la CEDH et non pas de se prononcer sur des procédures devant d'autres organisations ou organes internationaux ayant une mission distincte et étant régies par des textes réglementaires spéciaux, même si l'Etat défendeur y est membre aussi. *D'autre part*, à supposer que ces communications portent sur des faits nouveaux et que les personnes qui s'estiment victimes d'une violation de la Convention liée à ces faits n'aient pas porté, devant une autre instance internationale, une plainte de la même nature et objectifs que celle qu'elles auraient pu porter devant la CEDH, rien ne les empêche d'en saisir la Cour, dans le respect, bien entendu, des conditions de recevabilité énoncées dans l'article 35 de la Convention (*Celniku c. Grèce*, n° 21449/04, 5.7.2007, §§ 39-41). Cependant, en ce moment, on ne saurait assurément

assimiler les faits rapportés dans la communication de GHM à des agressions de mobile raciste, et encore moins à des violations des articles 2 ou 3 de la Convention, pour les faire entrer dans le champ de contrôle du Comité des Ministres.

9. Du reste, il est clair que l'argumentation de GHM repose sur une fausse prémisse, à savoir sur sa conviction que sa propre perception des faits et la qualification juridique qu'il leur donne, est correcte. Or, certainement, GHM n'a ni une connaissance complète des dossiers formés au sujet des cas qu'il a dénoncés en tant qu'actes racistes, ni de formation et de compétences de juge qui lui permettraient d'évaluer ces actes à l'aune du droit pertinent avec l'autorité de la chose jugée. Qui plus est, dans la mesure où il s'agit de faits dénoncés aux autorités par GHM lui-même, sa perception des faits manque de neutralité (*aliquis non debet esse judex in propria causa*). D'ailleurs, au cas où GHM estimerait que le traitement de ces faits par les autorités judiciaires, y compris les membres du parquet, n'était pas conforme aux exigences de la Convention, il pourrait en saisir la CEDH. Cependant, -on ne saurait le souligner suffisamment-, en ce moment, nous ne sommes pas en droit d'assimiler les faits rapportés dans la communication de GHM à des agressions de mobile raciste, et encore moins à des violations des articles 2 ou 3 de la Convention, pour les faire entrer dans le champ de contrôle du Comité des Ministres.

10. Quant aux conclusions du rapport d'ECRI de 2015, il convient de rappeler que ce rapport a été pris en considération par le Comité des Ministres lors du premier examen de l'affaire *Sakir* et de l'évaluation du plan d'action soumis par le Gouvernement à propos de cet examen (CM/Notes/1302/H46-12). A la suite de quoi, le Comité des Ministres a invité les autorités à fournir des informations et données statistiques, tout en se félicitant de la législation interne antiraciste et des autres mesures de caractère général relatives à la lutte contre la violence raciste (DM/Del/Dec(2017)1302/H46-12). Selon nous, il n'y a aucune raison de remettre en cause ces notes et cette décision aujourd'hui, alors même que ces mesures se sont avérées efficaces et que des mesures supplémentaires ont été mises en place, ce qui témoigne d'un haut niveau de sensibilisation des autorités impliquées dans l'enquête d'actes de violence raciste.

11. D'ailleurs, il convient aussi de remarquer -et cela est également très important, qu'en ce qui concerne la violence raciste envers des migrants, qui constitue l'objet du groupe « Sakir » (v. di dessus, §§ 6-7), l'ECRI, dans son rapport de 2015, a recommandé aux autorités helléniques de prendre la motivation raciste pleinement en compte lors de l'enquête et de la procédure judiciaire, et ce dès le début de celles-ci. Elle a également recommandé la mise en place d'une formation à l'intention des policiers, aux fins de laquelle les programmes proposés par les organisations internationales pourraient être

utilisés. L'ECRI a de surcroît recommandé aux autorités de mettre en place une formation pour les juges et les procureurs sur l'application de l'article 81A du Code pénal sur les infractions motivées par la haine (v. Rapport de l'ECRI sur la Grèce, 24.2.2015, § 76). Par la suite, en 2018, l'ECRI a considéré très positives et importantes les mesures prises par les autorités helléniques pour rendre la lutte contre le racisme et l'intolérance plus efficace et s'en est félicité. Elle a également estimé que sa recommandation précitée a été mise en œuvre (v. Conclusions de l'ECRI sur la mise en œuvre des recommandations faisant l'objet d'un suivi intermédiaire adressées à la Grèce, 27.2.2018).

12. En dernier lieu, il convient d'apporter deux précisions à notre bilan d'action en date du 4.10.2019 :

13. La première porte sur le nombre de procureurs spéciaux pour des incidents violents à caractère raciste : on en comptait 5 en 2017, on en compte **24** aujourd'hui. Force est de constater que l'engagement des autorités helléniques de s'attaquer contre les infractions à mobile raciste est manifeste et indéniable.

14. La deuxième porte sur l'arrêt n° 286/2019, la prise en compte du mobile raciste dans celui-ci et la peine infligée aux auteurs des actes y relatifs.

Dans notre bilan d'action nous affirmons que: « 31. *L'arrêt n° 286/2019 de la cour d'assises d'appel, quant à elle, concerne la condamnation de deux personnes à une réclusion de 21 ans et 5 mois chacun, pour le meurtre (homicide volontaire) d'un ressortissant de Pakistan. La cour d'appel a repéré le motif racial de l'acte et a souligné que les auteurs se sont aperçus, en raison de l'accent et de l'aspect physique de la victime qu'il s'agissait d'un migrant et l'ont agressée uniquement en raison de sa race, sa couleur et son origine ethnique dans le but de la tuer.* »

GHM conteste que les mobiles racistes aient été inclus dans cet arrêt, car, au moment de son prononcé, l'article 79 § 3 du code pénal était abrogé et le nouvel article 81A dudit code entraînait un durcissement des peines encourues et ne pouvait pas être appliqué¹.

15. Le meurtre en cause a eu lieu en 2013 et l'article 81A a été introduit le 10.9.2014. S'il est vrai que l'article 81A ne pouvait pas être appliqué rétroactivement, il n'en reste pas moins que le mobile raciste des auteurs a été bel et bien pris en compte par la cour

¹ "... However, and contrary to the claims of the government the judgment did not include the racist motivation because (as expressly stated in p. 110) the previous related article 79.3 had been abolished while the new Article 81A PC called for a harsher sentencing and thus could not be used. ..."

d'assises lors de la fixation des peines. En effet, la cour s'est prononcée dans les termes suivants :

« ... *La Cour d'assises en appel d'Athènes* ...

...

Après en avoir délibéré conformément à la loi

...

Par ailleurs, ..., les accusés s'étaient aperçus en raison de l'accent de la victime et de son aspect physique qu'il s'agissait d'un migrant ... les mobiles qui les ont incités à la prise d'une décision en commun de commettre en commun le meurtre étaient exclusivement les caractéristiques différentes de la race, de la couleur et de l'origine ethnique de la victime. Il s'agit donc d'un crime à caractère raciste, ce qui sera pris en compte par la cour, conformément à l'article 79 §§ 1, 3a du code pénal lors de l'évaluation de la personnalité des accusés et de leur disposition criminelle.

...

Après en avoir délibéré conformément à la loi

...

Au vu de ce qui précède et en plus du fait que les mobiles qui les ont incités à la prise de la codécision de commettre l'homicide étaient les caractéristiques différents de la race, de la couleur et de l'origine ethnique de la victime, conformément à l'article 79 § 3a du code pénal tel qu'il est en vigueur, il convient de imposer aux accusés qui ont été déclarés coupables les peine de privation de liberté suivantes: »

16. Enfin, s'il est vrai que la cour d'assises a reconnu aux accusés de circonstances atténuantes tenant à un nouveau départ dans la vie, et notamment à leur comportement après la commission de l'acte criminel pour une longue période, il est aussi vrai que l'arrêt n° 286/2019 a été soumis à l'examen minutieux du Parquet de la Cour de cassation. En effet, le surlendemain du prononcé de l'arrêt, le Procureur de la Cour de cassation en a demandé d'office copie pour examiner s'il était question de former un pourvoi en cassation. La motivation et le dispositif de l'arrêt étant conformes à la loi, il a été classé aux archives.

17. Au vu de ce qui précède et du bilan d'action en date du 4.10.2019, le Gouvernement hellénique demande au Comité des Ministres de bien vouloir écarter la communication de GHM et d'adopter une résolution finale au sujet des affaires du groupe « *Sakir* ».

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.