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Date: 11/09/2015

**DH-DD(2015)927**

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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Communication from the applicants' representative  
(01/09/2015) in the Nisiotis group of cases against Greece  
(Application No. 34704/08)

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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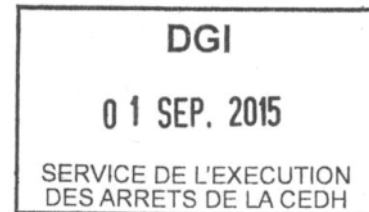
Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Communication du représentant des requérants dans le  
groupe d'affaires Nisiotis contre Grèce (Requête  
n° 34704/08) (**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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CC.

1. Ministry of Finance  
General Directorate of Administration and Audit  
Director of the Bureau of the Minister of Finance  
El. Venizelou 37, Athens  
2. Legal Council of the State  
Akadimias 68, 10678 Athens  
Attn: Mrs Souropani

Thessaloniki, 31 August 2015

- Ref:
- a. Execution of the judgments regarding the cases:
    - 1. Taggatidis v and Others (2889/09, 11.10.2011),
    - 2. Samaras v Others (11463/09, 28.2.2012),
    - 3. Tzamalis v Others (15894/09, 4.12.2012),
    - 4. Housein (71825/11, 25.04.2014),
    - 5. C.D. and Others (33441/10 20.06.2014),
    - 6. Kavouris and Others (73237/12, 18.10.2014),
    - 7. Logothetis and Others (740/13, 26.03.2015),
    - 8. Athanasiou and Others (36546/10, 24.04.2015) and
    - 9. Mahammad and Others (48352/12, 15.1.2015).
  - b. My previous letter of 27<sup>th</sup> July 2012
  - c. My previous letter of 24<sup>th</sup> January 2013
  - d. My previous letter of 18<sup>th</sup> September 2013
  - e. My previous letter of 18<sup>th</sup> February 2014

Regarding the above mentioned cases, I would like to illustrate a series of problems that have arose during the execution of the judgments by the Greek Government. Up to date certain issues have never been solved (attachments), and new ones have been accumulated (no payment to applicants having no Tax Clearance Certificate, or Tax Registry Number).

In the end, a list of the applicants per case with the respective status of execution is annexed.

## **1. Attachment of sums awarded**

**a. Attachment of sums awarded for costs and expenses.** As said before, the Court awarded 2.500 to 1,500 euros for expenses to the applicants per case. This sum has been broken down and added to the sum of just satisfaction for each of the applicants.

In many cases this sum of money has been seized by the local Taxation Office without having made any categorisation on the basis of the character of the due sum of money. Therefore the calculation of the attachments of sums awarded for expenses is incorporated into the attachments of sums awarded for non-pecuniary damage (see Table A).

**b. Attachment of sums awarded for non-pecuniary damage.** To 37 applicants the local Taxation Office have seized partly or the whole amount of the due just satisfaction as the respective applicant had debts due to the state. To this point a distinction must be done regarding two categories of debt: Those which have a causal link with the facts of the above mentioned case before the ECtHR and those which have no causal link. The distinction of the cause of debt is important for the calculation of the just satisfaction (see also *Piersack*, 26.11.1984, regarding the implementation of the old Article 50). However, regardless the cause of the debt to the state, the Court has said that in case of violation of Article 3, and because of the nature of the committed violation, namely torture, degrading or inhuman treatment, it is not possible to attach the just satisfaction for debts to the state. In the present case the whole amount of the due just satisfactions has been attached. If the special nature of the violation has an important meaning then also the principle of proportionality (between the nature of violation and the fiscal needs of the state) should be taken into account. In effect, the 'full attachment' annihilated the due just satisfaction and in the end annulled the aim of Article 41. In the case *Selmouni v. France* (28 July 1999, § 133), the Court (GC) said: "The Court considers that the compensation fixed pursuant to Article 41 and due by virtue of a judgment of the Court should be exempt from attachment. It would be incongruous to award the applicant an amount in compensation for, inter alia, ill-treatment constituting a violation of Article 3 of the Convention and costs and expenses incurred in securing that finding if the State itself were then to be both the debtor and creditor in respect of that amount. Although the sums at stake were different in kind, the Court considers that the purpose of compensation for non-pecuniary damage would inevitably be frustrated and the Article 41 system perverted if such a situation were to be deemed satisfactory" (see also case *Velikova v. Bulgaria*, 18.5.2000, §99).

In the present cases, the debt of the applicants consist of the pecuniary penalty that the applicants had to pay due to their penal conviction (or pre-trial incarceration) according to which they have been detained in a prison for which a violation of article 3 has been found. While implementing the payment order issued by the government, no Taxation Office has checked the cause of the debt of the respective applicant and proceeded to attach fully or partially the amount of money due to the state of the due just satisfaction. In one case (No 33 in the list of the Taggatidis case), the debt was not yet due. However, the whole amount of money awarded as just satisfaction stems from violation of Article 3. Therefore no matter is the cause of the applicants' debt, the government should not attach any part of the just satisfaction.

In total, 220,541.74 euros have been seized through this practice (Annex, Table A) to all 37 applicants.

Although the Legal Council of the State has warning the relevant fiscal authorities that the execution of the aforementioned cases is an international obligation of the state, and that excessive attachment to due just satisfaction could not be tolerated as far as a violation of articles 2, 3 and 5 of the ECHR is found, the fiscal authorities (Service of Financial Control, YDE) deny to consider the matter.

## **2. Applicants with no Tax Clearance Certificate**

Since late 2014, the Greek government refrains from any payment to those beneficiary applicants that do not have a Tax Clearance Certificate. The Service of Financial Control (YDE) has required from the respective Tax Offices according to art. 83 Code of Public Revenue and circular 2/113934<sup>g</sup>/0026/31-12-2013, to ask for a TCC for any payment regarding general attachment procedures and payment orders. However, according to art. 2 par. 1. of the circular ΠΟΑ 1274/2013 of 27.12.2013 (issued by the Secretary General of Public Expenses) beneficiaries of payment orders for indemnities related to mal practice (tort) are exempted from the obligation to possess Tax Clearance Certificate. As far as violation of article 3 ECHR falls within the scope of malpractice (tort/delict) according to article 914 of the Civil Code, the applicant has no obligation to possess Tax Clearance Certificate. Until 2014, in all relevant cases the applicants with no Tax Clearance Certificate have been paid the just satisfaction as awarded by the Court in due time.

In all attempts made by us to solve the issue directly with the Ministry of Finance, no answer or no justification was delivered.

Up to date, this arbitrary practice continues resulting in no payment and therefore in abstention from the due execution of the relevant judgments.

## **3. Applicants with no Tax Identification Number**

Undocumented aliens according to the Greek law (art. 26, Law 4251/2014) have no right to apply for Tax Identification Number (AFM) and therefore they could not receive any payment from the state financial authorities. The issue was well known by the Ministry of Finance, which was applying a special procedure so that all undocumented aliens were dully paid the just satisfaction as awarded by the Court.

Since late 2014, no payment of just satisfaction awarded by the Court to applicants who cannot apply for AFM is made. Already the Legal Council of the State clarified to the Ministry of Finance that the government has a legal obligation to pay the awarded just satisfaction sums to all applicants including those who have no right to apply for AFM. Up to date no answer is given from the Ministry of Finance.

Moreover, those aliens who have no AFM, Identity Card, stay permit or passport are not able to open a bank account (as required by law [Law 691/2008] in order to

receive a payment order by the state treasury). Therefore they cannot receive the due payment. However, until recently, payment orders were paid to the applicants' legal representative. Again, all relevant payments are pending. The issue was put forward by the Legal Council of the State to the Ministry of Finance, but no payment was done.

It has to be stressed that against the newly established practice as described above, there was a payment to applicants with no AFM (judgment *Logothetis and Others*, 740/13), that shows that there is always a way for the administration to comply with their legal obligations and execute dully the judgments. Or that this is the exception that verifies they newly established rule.

Finally, in one case the beneficiary applicant possesses all required documents but the government denies paying the due just satisfaction (case CD and others, applicant: Baran Rakip).

#### **4. Payment to a bank account indicated by the applicants representative**

In some cases the Court orders the payment of the awarded just satisfaction to be done to a bank account indicated by the applicants representative. Although in the past similar judgments have been dully executed, in the judgment *Athansiou and Others* the financial authorities deny to pay the sum awarded to the beneficiary applicants (271,000 euros for just satisfaction plus 1,500 for expenses, Table D).

Also in cases that the just satisfaction is paid later than the 3-month period as set by the Court the due interest rate according to the judgments was never paid.

I would be grateful if you take into consideration this letter and follow up the execution of the case so that all applicants receive their due just satisfaction.

For the applicants,

Konstantinos Tsitselikis

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## ANNEX

### Tables A: Attached just satisfaction

- Taggatidis and Others (18 applicants)**

No of Applicants at the application/ judgment	Family name	name	ATTACHED SUM OF MONEY [€]	Sum that has been paid (including expenses)
4	Georgakopoulos	Georgios	10.053,19	0,00
5	Monastiridis	Manolis	3.900,52	6.152,67
10	Kinanidis	Grosgorios	6.134,49	3.918,70
11	Margazis	Dimitris	10.053,19	0,00
14	Gianiotis	Nikolaos	10.053,19	0,00
18	Gkalntemis	Kon/nos	10.053,19	0,00
25	Pelekoudas	Kon/antinos	10.053,19	0,00
27	Kapetanios	Ilias	662,44	9.390,75
29	Mylothros	Georgios	6.464,89	3.588,30
31	Odontopoulos	Apostolos	350,37	9.702,82
32	Mpandidakis	Panayotis	10.053,19	0,00
33	Loukanikas	Georgios	6.346,87	3.706,32
34	Bekos	Vaggelis	709,18	9.344,01
35	Papanikolaou	Vasilios	1.108,73	8.944,46
36	Alvanos	Ilias	8.407,66	1.645,53
37	Hristopanos	Anastasios	550,00	9.503,19
38	Kefalas	Dimitrios	10.053,19	0,00
39	Katsaris	Vasilios	10.053,19	0,00

- Samaras and Others (3 applicants)**

No of Applicants at the application/ judgment	Family name	name	ATTACHED SUM OF MONEY [€]	Sum that has been paid (including expenses)
1	Samaras	Dimitrios	6.120,15	8.995,22
9	Garnavos	Daniil	7.115,38	0,00
12	Bikas	Aggelos	335,90	6.779,48

- Tzamalīs and Others (5 applicants)**

<b>No of Applicants at the application/ judgment</b>	<b>Family name</b>	<b>name</b>	<b>ATTACHED SUM OF MONEY [€]</b>	<b>Sum that has been paid (including expenses)</b>
1	TZAMALIS	Dimitrios	7,107,14	0,00
3	VASSOS	Ioannis	10,107.14	0,00
6	TZOULAS	Athanassios	15,107.14	0,00
10	SAMPANIS	Fotios	3,468.16	6,548.98
12	KALANTZIS	Dimitrios	10,107.14	0,00

- Kavouris and Others (4 applicants)**

<b>No of Applicants at the application/ judgment</b>	<b>Family name</b>	<b>name</b>	<b>ATTACHED SUM OF MONEY [€]</b>	<b>Sum that has been paid (including expenses)</b>
3	Kampas	Athansios	5.166,66	0,00
5	Mouzakidis	Petros	4.171,3	995,36
6	Tsolakidis	Dimitrios	5.166,66	0,00
7	Manolopoulos	Antonios	4.901,11	265,55

- Logothetis and Others (7 applicants)**

<b>No of Applicants at the application/ judgment</b>	<b>Family name</b>	<b>name</b>	<b>ATTACHED SUM OF MONEY [€]</b>	<b>Sum that has been paid (including expenses)</b>
1	Logothetis	Nikolaos	2.426,96	7.698,74
3	Lykoudis	Aristeidis	9.097,12	1.027,88
4	Antellis	Georgios	4.881,71	4.043,29
5	Vasilopoulos	Poseidonas	1.288,16	7.336,84
7	Smyrnios	Aggelos	2.821,51	2.303,49
15	Spyrantis	Vitalios	2.814	7.311
16	Orfanidis	Vasileios	10.125	0,00

## Tables B: applicants not possessing a Tax Identity Number (AFM)

### 1. Athanasiou and Others (36546/10)

Applicant	Just satisfaction
Dimitru Gergulov	10.125€
Vasilios Abdalla	7.125€
Ali Assaad	10.125€
Ali Adnan	10.125€
Mehmet Sirin Bayram	10.125€
Artan Dragoti	10.125€
Amjad Bahri	10.125€

### 2. Housein (71825/11)

Applicant	Just satisfaction
Ali Housein	12.000€

### 3.- Mahammad and Others (48352/12)

Applicants	Just satisfaction
Najib Mahammad	8.142,85€
Jeremy Abdalah	8.142,85€
Mohammed Ahammed	8.142,85€
Yacob Arab	8.142,85€
Nematullah Arab	8.142,85€
Ramazani Hassan	8.142,85€
Upsom James	8.142,85€
Tinziin Lobsang Tsgring	8.142,85€
Mohamed Mohamedi	8.142,85€
Nahim Rezai	8.142,85€



Khale Sondey	8.142,85€
Muhammad Hussein Sultani	5.142,85€
Frank Kalegi Ugoh	8.142,85€
Austin Ukurie	8.142,85€

#### 4. Kavouris and Others (73237/12)

Applicants	Just satisfaction
Baiaram Ion	5.166,66€
Stanoev Ivaylo	5.166,66€

#### 5. C.D and Others (33441/10)

Applicants	Just satisfaction
Chalaf Dahil	5.366.66€
Fariz Halil	9.366.66€
Ganem Chaled	9.366.66€
Hadj Zedan	5.366.66€
Durbu Shakir	9.366.66€
Ali Yosef	6.366.66€
Kunzee Suleiman	6.366.66€
Simil Yasir	5.366.66€
Rasool Faiz	5.366.66€
Asif Mahmud	9.366.66€

#### 6.- C.D and Others (33468/10)

Applicant	Just satisfaction
Baran Rakip <sup>1</sup>	10.166.66€

#### 7.- CD and Others (33476/10)

Applicant	Just satisfaction
Abdulahim Mohamed	10.166.66€

#### TABLE C: APPLICANTS WITH NO TAX REGISTRY CERTIFICATE

##### Logothetis and Others

No of Applicants at the application/ judgment	Family name	name	ATTACHED SUM OF MONEY [€]	Sum that has been paid (including expenses)
1	Logothetis	Nikolaos	2.426,96	7.698,74
3	Lykoudis	Aristeidis	9.097,12	1.027,88
4	Antellis	Georgios	4.881,71	4.043,29
5	Vasilopoulos	Poseidonas	1.288,16	7.336,84

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<sup>1</sup> He has all required documents.

**TABLE D: DENIAL TO PAY TO THE BANK ACCOUNT OF THE APPLICANTS' REPRESENTATIVE**

**Athanasίου and Others (36546/2010, 23.10. 2014)**

<b>Name</b>	<b>Just satisfaction awarded + expenses [Euros]</b>
Stylianos Loukaggikas	15.000 + 95.7
Ilias Kapetanios	18.500 + 95.7
Christos Koumouras	20.000 + 95.7
Fotios Theodoratos	20.000 + 95.7
Tryfon Karahalios	20.000 + 95.7
Georgios Kavalakis	19.500 + 95.7
Dimitru Gergulov	10.000 + 95.7
Vasilios Abdalla	7.000 + 95.7
Theofilos Derviniotis	10.000 + 95.7
Anastasios Mourkoutas	10.000 + 95.7
Alexandros Tserpelis	10.000 + 95.7
Ali Assaad	10.000 + 95.7
Ali Adnan	10.000 + 95.7
Mehmet Sirin Bayram	10.000 + 95.7
Artan Dragoti	10.000 + 95.7
Amjad Bahri	10.000 + 95.7