



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 19 February 2009

CommDH(2009)9
Original version

REPORT

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

Following his visit to Greece
on 8-10 December 2008

Issue reviewed:
Human rights of minorities

Executive Summary

Commissioner Thomas Hammarberg and his delegation visited Greece, including the Evros department, from 8 to 10 December 2008. In the course of this visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations on certain human rights issues, including minorities. The Commissioner held also discussions and had contacts with members of minority groups.

In the present Report, following an overview of the main features of and issues relating to minorities in Greece, the Commissioner focuses on the following major points:

I. Minorities and the right to freedom of association: The Commissioner remains concerned by the authorities' refusal to recognize the existence of any other kind of minority except for the 'Muslim' one and the over-restrictive practice of Greek courts which by proceeding to a preventive, in effect, control of certain applicant minority associations have refused to register them. Also of serious concern has been the radical measure of the dissolution of a minority association that used to operate in Greece for decades. In this context, the Commissioner expresses his worry that this situation has led in fact to a number of relevant applications before and of unanimous judgments against Greece by the European Court of Human Rights. The Commissioner calls upon the Greek authorities to adopt urgently all necessary measures in order to make possible the effective enjoyment by minority members of their right to freedom of association, in full alignment with the Council of Europe human rights and minority protection standards.

II. Protection of minority members affected by the application of former Article 19 of the Greek Nationality Code: The Commissioner welcomes the efforts made by the Greek authorities and urges them to restore immediately the nationality of those minority members who were denationalised under the above provision and have remained in the country. The authorities' attention is drawn to the need to provide special care to any of these persons who are elderly and/or with limited financial means to cover welfare and medical services of which they are in need. As regards minority members who were stripped of Greek nationality under former Article 19 and have remained abroad, the Commissioner calls on the authorities to consider the possibility of providing them, or their descendants, with satisfaction, according to the general principles of international law.

III. Muftis and application of the Sharia Law in Greece: The Commissioner takes note of the very serious concerns that have been expressed by competent national and international organizations about the application to Muslim Greek citizens in Thrace of the Sharia Law in family and inheritance law matters by Muftis who are appointed by the Greek state. Given the issues of incompatibility of this practice with European and international human rights standards, the Commissioner recommends its review by the authorities, institutionalizing at the same time an open and continuous dialogue with representatives of the Muslim minority on all matters affecting their everyday life and human rights, in accordance with the Council of Europe standards. Any amendment of the current legal framework should be carried out with the direct involvement of the minority concerned that should be fully enabled to participate effectively in cultural and social life and in public affairs. In the meantime, the Commissioner urges the Greek authorities to ensure an effective review and control by domestic civil courts of the judicial decisions which are rendered by Muftis.

Finally, by this Report the Commissioner calls upon the Greek authorities to proceed promptly to the ratification of or accession to certain major Council of Europe treaties, such as the Framework Convention for the Protection of National Minorities, the European Convention on Nationality and the Fourth Protocol to the European Convention on Human Rights.

The Greek authorities' comments are appended to the present Report.

I. Introduction

1. The present Report follows a visit to Greece by the Commissioner for Human Rights (the Commissioner) from 8 to 10 December 2008,¹ in the course of which he held consultations with a number of state authorities, including Mr Aristides Agathokles, Secretary General of the Ministry of Foreign Affairs. The Commissioner also traveled to Alexandroupolis (Evros department, north-eastern Greece) where he met Mr Osman Ahmet Hatzi, Member of Parliament, Mr Ilhan Ahmed, former Member of Parliament and Mr Mustafa Mustafa, former Member of Parliament. Before his visit the Commissioner received a memorandum from representatives of the political party 'European Free Alliance – Rainbow'.
2. The Commissioner sincerely wishes to thank the Greek authorities in Strasbourg, the Evros department and Athens for the assistance that they provided in facilitating the independent and effective performance of his visit.
3. Greece, one of the oldest member states of the Council of Europe, has ratified and is bound by the vast majority of the major international and European human rights instruments. Greece also signed in 1997 the Framework Convention for the Protection of National Minorities.
4. The Commissioner, in his capacity as an independent and impartial institution of the Council of Europe, wishes to continue his sincere and constructive dialogue with the Greek authorities and to assist them in their efforts to further enhance the effective protection of the Council of Europe human rights standards.
5. The protection and promotion of the human rights of non-dominant, minority groups in Europe has always been at the heart of the Commissioner's work. This is because European history has indeed shown that the protection of minorities is essential to stability, democratic security and peace in this continent. Protection afforded by states to non-dominant groups is in fact a litmus test for the former's effective observance of and respect for the fundamental human rights principles that should flourish in every pluralist, democratic society.
6. In the present Report, after an overview of the main features of minorities in Greece (section II), the Commissioner would like to focus on the following major issues: minorities and the right to freedom of association (section III); protection of minority members affected by the application of former Article 19 of the Greek Nationality Code (section IV); Muftis and application of the Sharia Law in Greece (section V), followed by conclusions and recommendations (section VI).

II. Main features of minorities in Greece

7. The Commissioner notes that the Greek authorities recognise the existence of only one minority on Greek territory, the 'Muslim' one in western Thrace (north-eastern Greece), by virtue of the Lausanne Peace Treaty of 24 July 1923.² This minority group (and the 'Greek inhabitants of Constantinople') had been expressly excluded from the compulsory exchange of populations between Greece and Turkey under the Lausanne Convention of

¹ During his visit the Commissioner was accompanied by his Advisors Mr Nikolaos Sitaropoulos and Ms Silvia Grundmann.

² Section III of the Lausanne Peace Treaty provided for the protection of the 'Moslem minority' in Greece and the 'non-Moslem minorities' in Turkey. This included, inter alia, protection of life and liberty, freedom of exercise, whether in public or private, of any creed, religion or belief, full freedom of movement and of emigration, equality in treatment and security in law and in fact, http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne.

30 January 1923.³ According to the authorities, it now 'numbers around 100 000 persons and consists of three distinct groups, whose members are of Turkish, Pomak or Roma origin'⁴, each representing respectively 50%, 35% and 15% of this minority population.⁵

8. At the same time, the Greek authorities have affirmed that Greece 'subscribes to the right of each person to self-identification [and that] the members of the Muslim minority in Thrace are free to declare their origin, speak their language, exercise their religion and observe their particular customs and traditions'.⁶ The Commissioner has noted that 'persons of Roma origin' outside Thrace are not considered by the Greek authorities as members of a minority but of a 'vulnerable social group'.⁷
9. The Commissioner has observed that despite the non recognition of any other national or linguistic minority, Greek authorities have acknowledged that in northern Greece there exist 'a small number of persons who... use, without restrictions, in addition to the Greek language, Slavic oral idioms, confined to family or colloquial use'. According to the authorities, this 'Slav-oriented group of Greek citizens in [the Greek region of] Macedonia have been freely participating with their own political party in parliamentary elections in Greece'.⁸ In fact, in the 2004 elections for the European Parliament this party ('European Free Alliance – Rainbow', based in the town of Florina as from 1995⁹) received 6 176 votes, that is a national percentage of 0,10%.¹⁰
10. The Commissioner takes note of the serious concerns which have been expressed by monitoring bodies of both the Council of Europe and the United Nations about the policy and practice followed so far by Greek authorities vis-à-vis minorities.
11. In particular, in its 2004 Third Report on Greece, the European Commission against Racism and Intolerance (ECRI) commented that 'persons wishing to express their Macedonian, Turkish or other identity incur the hostility of the population. They are targets of prejudices and stereotypes, and sometimes face discrimination, especially in the labour market'¹¹.
12. As regards UN monitoring organs, in 2004 the Committee on Economic, Social and Cultural Rights in its Concluding Observations, after having expressed its concern 'that there is only one officially recognized minority in Greece, whereas there are other ethnic groups seeking that status', urged Greece 'to reconsider its position with regard to the recognition of other ethnic, religious or linguistic minorities which may exist within its territory in accordance with recognized international standards'.¹²
13. One year later, the UN Human Rights Committee noted 'with concern the apparent unwillingness of the [Greek] Government to allow any private groups or associations to use

³ Article 14 of the 1923 Treaty of Lausanne (24 July 1923) excluded from the population exchange also 'the inhabitants of the islands of Imbros and Tenedos'.

⁴ *Greece's Periodic Report on the implementation of the International Convention on the Elimination of all forms of Racial Discrimination* (2008), paragraph 24, available at: www.yplex.gov.gr.

⁵ Initial Report of Greece to the UN Human Rights Committee, 15/04/2004, paragraph 899, <http://tb.ohchr.org/default.aspx?country=gr>.

⁶ *Greece's Periodic Report on the implementation of the International Convention on the Elimination of all forms of Racial Discrimination* (2008), paragraph 25, available at: www.yplex.gov.gr.

⁷ *Ibid.* paragraphs 7 and 47 ff.

⁸ *Ibid.* paragraph 27.

⁹ See site of the party at www.florina.org.

¹⁰ Ministry of Interior, Results of the 2004 elections for the European Parliament, in Greek, available at: www.ypes.gr.

¹¹ ECRI, *Third Report on Greece*, 08/06/2004, paragraph 81, available at: www.coe.int/T/E/human_rights/Ecri/.

¹² Concluding Observations of 07/06/2004, paragraphs 10, 31, available at: www.ohchr.org.

associational names that include the appellation "Turk" or "Macedonian", based upon the State party's assertion that there are no ethnic, religious or linguistic minorities in Greece other than the Muslims in Thrace. The Committee note[d] that individuals belonging to such minorities have a right under the [International] Covenant [on Civil and Political Rights] to the enjoyment of their own culture, the profession and practice of their own religion, and the use of their own language in community with other members of their group (art. 27).¹³

III. Minorities and the right to freedom of association

14. In its latest Report on Greece, ECRI deplored the fact that, five years after the 1998 judgment of the European Court of Human Rights in the relevant case of *Sidiropoulos and others*,¹⁴ the 'Home of Macedonian Civilisation', a non-profit-making association that a number of Greek nationals who claimed to be of Macedonian ethnic origin aimed to establish in the town of Florina, had not been registered in accordance with the provisions of the Greek Civil Code.¹⁵ The domestic courts' refusal to allow registration of this association had been grounded, inter alia, in a perceived 'intention on the part of the [above association's] founders to undermine Greek territorial integrity' and found that 'the promotion of the idea that there is a Macedonian minority in Greece...is contrary to the country's national interest and consequently contrary to law'.¹⁶
15. The Commissioner has been informed that the above association's legal personality is still not recognized, even though the Greek government submitted to the Council of Europe Committee of Ministers in 2000, before the conclusion by the Committee of the examination of this case under ex Article 54 (now Article 46, paragraph 2) of the European Convention on Human Rights, that 'considering the direct effect today given to judgments of the European Court in Greek law...the Greek courts [would] not fail to prevent the kind of judicial error that was at the origin of the violation found in this case'.¹⁷ ECRI, having noted that 'representatives of the Macedonian community have asked the authorities to recognize their right to self-identification, as well as the existence of a Macedonian national minority', inter alia, encouraged the authorities 'to take further steps toward the recognition of the freedom of association and expression of members of the Macedonian and Turkish communities' in Greece.¹⁸
16. The Commissioner has taken note with particular concern that the Greek authorities' refusal to recognise the existence of any other kind of minority apart from the 'Muslim' one has led in fact to a number of applications before the European Court of Human Rights, especially concerning minority members' right to freedom of association, as provided for by Article 11 of the European Convention.
17. One such case has been that of *Bekir-Ousta and others*¹⁹ in which the Court found unanimously against Greece in 2007. This case concerns the competent courts' refusal to allow the registration of the Muslim minority applicants' association that they decided to form in Evros in 1995, under the name 'Association of the minority youth of the Evros Department', on the ground that the applicants intended in fact, through this association, to

¹³ Concluding Observations of 25/04/2005, paragraph 20; see also HRC General Comment 23: *The rights of minorities*, 08/04/94, available at: www.ohchr.org.

¹⁴ *Sidiropoulos and others v Greece*, judgment of 10/07/1998. The Court in this case found unanimously a violation by Greece of the applicants' right to freedom of association enshrined in Article 11 of the European Convention.

¹⁵ ECRI, *Third Report on Greece*, 08/06/2004, paragraph 81, available at: www.coe.int/T/E/human_rights/Ecri/.

¹⁶ *Sidiropoulos and others v Greece*, judgment of 10/07/1998, paragraphs 10, 11.

¹⁷ Appendix to the Council of Europe Committee of Ministers Resolution DH(2000)99, of 24/07/2000, available at: www.coe.int/t/cm.

¹⁸ *Ibid.* paragraph 84.

¹⁹ Judgment of 11/10/2007.

promote the idea that an ethnic, as contrasted to a religious, minority existed in Thrace. This, according to the domestic courts, risked creating confusion in the public as to the origin of the members of this association. Having noted that the Greek Constitution and the civil code in fact do not allow the domestic courts to proceed to a preventive control for the establishment of non-profit-making associations, the European Court of Human Rights found unanimously that there had been a violation of the applicants' right to freedom of association, since there was no 'pressing social need' that would have made the non-registration of the above association necessary in a democratic society.

18. The Court, with a similar reasoning, found anew unanimously against Greece in 2008 in the case of *Emin and others v Greece*,²⁰ which concerns the domestic courts' refusal to allow the registration of the 'Cultural Association of Turkish Women of the Prefecture of Rodopi' that the applicants wished to create in 2001. The national courts deemed that this registration would be against the public order on the ground that the title of the association would create the impression that there exists in Greece a Turkish (national) minority as contrasted to the religious one provided for by the 1923 Lausanne Peace Treaty. To date, the Commissioner has not been informed of any measures by the Greek authorities aimed at the registration of the above associations.
19. Of further concern to the Commissioner has been a fourth case that led in 2008 to a new judgment against Greece by the European Court of Human Rights (case of *Tourkiki Enosi Xanthis and others*)²¹. It concerns the dissolution by a domestic court, upon request by the Prefect of Xanthi, of the applicant association which was entitled 'Turkish Association of Xanthi' and aimed, inter alia, at promoting the culture of the 'Turks of western Thrace' and contributing to propagating the cultural, social and religious reforms that took place in Turkey following the regime change by Mustafa Kemal Atatürk.²² It is noted that the members of this association are part of the officially recognised 'Muslim' minority, of Turkish ethnic origin, and that this association had been registered and operating in Greece under this name since 1936, and under another name, 'House of the Turkish youth in Xanthi' between 1927 and 1936.
20. The Court in this case found unanimously another violation by Greece of Article 11 of the European Convention. It judged as unnecessary in a democratic society the 'radical measure' of dissolution of the above minority association by the domestic courts on the ground, inter alia, that the term 'Turkish' in the title and in the memoranda of the above non-profit association (promoting the idea of existence of an ethnic, not a religious minority in line with the Lausanne Treaty) and the reference to the ideals of Kemal Atatürk ran against public order. The Court, having noted that the applicant association had never in fact appealed to violence, underlined that no matter how shocking and unacceptable may seem to be for the authorities certain points of view or terms used by the association or its members, these should not automatically be viewed as a threat to the public order or the country's territorial integrity, since the essence of democracy consists in fact in its capacity to solve problems through an open debate.²³ The Commissioner has not been informed to date of any measures by the Greek authorities aimed at reregistering the above association.

²⁰ Judgment of 27/03/2008.

²¹ Judgment of 27/03/2008. Request for referral to the Grand Chamber was rejected and the judgment became final on 29/09/2008.

²² Ibid. paragraph 6.

²³ Ibid. paragraph 56.

IV. Protection of minority members affected by the application of former Article 19 of the Greek Nationality Code

21. Former Article 19 of the Greek Nationality Code (GNC, Legislative Decree (Law) 3370/1955)²⁴ was a provision that was applied from 1955 until 1998. It provided for the denationalisation of 'citizens of different [non-Greek] descent' ('alloyenis', as opposed to 'omoyenis', that is, 'of the same [Greek] descent') who left Greece 'with no intent to return'.
22. According to former Article 19 GNC 'a citizen of non-Greek descent ['alloyenis'] who leaves the Greek territory with no intent to return may be declared to be a person who has lost the Greek nationality'. In the framework of Article 19 a Greek citizen of non-Greek descent ('alloyenis') meant an individual with Greek nationality who did not 'originate from Greeks, had no Greek consciousness and did not behave as a Greek [and consequently] it may be concluded that their bond with the Greek nation is completely loose and fragile'.²⁵
23. It has been widely accepted that the former Article 19 GNC was in contravention of, inter alia, Article 12, paragraph 4, of the International Covenant on Civil and Political Rights (ratified by Greece by Law 2462/1997) which provides that 'No one shall be arbitrarily deprived of the right to enter his own country', as well as to Article 3, paragraph 2, of the Fourth Protocol to the European Convention on Human Rights (this Protocol has not as yet been ratified by Greece) which provides that 'No one shall be deprived of the right to enter the territory of the State of which he is a national'.²⁶
24. As a consequence of the above provision, from 1955 to 1998 there were approximately 60 000 Greek citizens, including minors, who lost their nationality.²⁷ The majority of these persons have been of Turkish ethnic origin.
25. The European Commission against Racism and Intolerance (ECRI) has noted that Greece has not taken measures that would lead to the reparation of 'the serious consequences that arose from the deprivation of citizenship on the basis of Article 19. In particular, the repeal of Article 19 does not have a retroactive effect.²⁸ Denationalised persons who have remained in Greece (estimated at 200 persons)²⁹ and wish to recover their Greek nationality have had to go through the normal naturalization process applicable to aliens, a process that has been described as 'long, expensive and uncertain as regards the outcome, and humiliating for persons who have wrongly lost their citizenship'.³⁰ During the discussions that the Commissioner had during his visit to Greece with the aforementioned minority members in Thrace the lack of any 'moral compensation' (satisfaction) so far to the forced denationalization victims was particularly brought to his attention.
26. The Commissioner has been especially concerned at reports according to which the remaining stateless persons in Greece, most of them middle- and old-aged and of limited financial means, often encounter difficulties in benefiting particularly from health services

²⁴ Article 19 of the 1955 Code was abolished in 1998 by Law 2623/1998.

²⁵ Z. Papassiopi-Passia, *Nationality Law*, Athens, Thessaloniki, Sakkoulas Publishers, 2003, p. 159; Z. Papassiopi-Passia, case law commentary, *Armenopoulos*, 1975, 724 ff at 726; Council of State judgment 57/1981, *To Syntagma*, 1982, 87 at 88 (in Greek).

²⁶ According to the Greek National Commission for Human Rights former Article 19 was also unconstitutional, see Greek National Commission for Human Rights, *Decision on the loss of the Greek nationality by virtue of former Article 19 GNC and the procedure for its recovery*, 30/10/2003, available at: www.nchr.gr (in Greek).

²⁷ Idem.

²⁸ ECRI, *Third Report on Greece*, 08/06/2004, paragraph 9, available at: www.coe.int/T/E/human_rights/Ecri/.

²⁹ In their comments on the draft Report the Greek government noted that 'less than 30' stateless persons of the Muslim minority have now remained in Greece.

³⁰ Idem. Most of the persons who remained abroad have reportedly acquired other nationalities.

when in need thereof. The Commissioner has noted that in 2006 the Greek National Commission for Human Rights called upon the Greek state to urgently provide for coverage of all these particularly vulnerable persons under the state health system.³¹

27. According to the Greek government, '[t]he vast majority of persons deprived of their citizenship by virtue of Article 19 are already foreign citizens and reside outside the Greek territory. The general provisions of the Citizenship Code on the naturalization of foreign citizens may be applicable to them. [The]...“stateless” Muslims, who reside in Thrace...have been provided with special Identity Cards, in accordance with the UN Convention relating to the Status of Stateless Persons... At the same time, the Ministry of Interior has issued instructions to Local Authorities for the speeding up of the procedure for the naturalization of these persons.³² It is expected that soon Greek citizenship will be granted to the abovementioned stateless persons, who are permanent residents of Greece'.³³ The Commissioner notes with satisfaction that during his conversation with the Secretary General of the Foreign Ministry, Mr Agathokles, on 10 December 2008, the latter confirmed the Greek government's determination to proceed promptly to the restoration of the nationality of the remaining stateless persons who now reside in Greece.

V. Muftis and application of the Sharia Law in Greece

28. The three, currently functioning, Muftis (religious officials and legal experts in the Sharia Law) in Thrace (in the towns of Xanthi, Komotini and Didimoticho) have the status of Greek civil servants. The Muftis are Greek Muslims, graduates of a University-level Islamic school of theology, and appointed by decision of the Minister of Education and Religious Affairs. In accordance with, inter alia, Law 1920/1991 on Muftis, which echoes in effect early 20th century treaties concluded between Greece and the Ottoman Empire/Turkey, a Mufti has, in addition to his role as a Muslim legal expert, the exceptional competence to adjudicate, applying the Sharia Law, among Greek Muslim citizens residing in their region upon cases relating to, inter alia, marriage, divorce, alimony, guardianship and inheritance. It is to be noted that Greek Muslims residing on the Dodecanese islands are not subject to Sharia Law but to Greek civil law. The Commissioner notes that in 2006 the Greek National Commission for Human Rights proposed the adoption of legislation aimed, inter alia, at abolishing the public law personality of Muftis and at restricting their competence to strictly spiritual tasks.³⁴
29. The Commissioner has observed that the continuing practice of appointment of the Muftis by the Greek state, excluding their direct election by members of the Muslim minority, has caused in the past and continues to cause deep disappointment and reactions by members of the Muslim minority. In this context, the Commissioner recalls a number of judgments against Greece by the European Court of Human Rights concerning prosecutions for having 'usurped the functions of a minister of a "known religion"', against an elected Mufti issuing and signing messages to the Muslims attending his prayers in Thrace, while the Greek state had appointed another Mufti. In its judgment in the case of *Agga v Greece* (N° 2) (17/10/2002) (concerning the Mufti post at Xanthi) the Court had found a violation of Article 9 of the Convention (freedom of religion) on account of the above-mentioned

³¹ Greek National Commission for Human Rights, *Decision on the issue of medical and hospital coverage of stateless persons, members of the minority in Thrace and of other categories of aliens*, 09/02/2006, available at: www.nchr.gr (in Greek).

³² The Commissioner has been informed that in February 2007, by the decision of the Minister of Interior N° 62036/3259, the Greek nationality was restored to 36 stateless persons in Thrace, while in 2006 65 persons held stateless identity cards in Thrace and in the Dodecanese islands.

³³ *Greece's Periodic Report on the implementation of the International Convention on the Elimination of all forms of Racial Discrimination* (2008), paragraphs 225-226, available at: www.ypex.gov.gr.

³⁴ Greek National Commission for Human Rights, *Proposal aimed at regulating the relations between the State and the Church*, 19/01/2006, available at: www.nchr.gr (in Greek).

prosecution. The supervision of execution of this and the similar, earlier case of Serif was concluded by the Council of Europe Committee of Ministers in 2005 following the adoption by Greece of individual as well as of general measures to prevent a similar violation of the Convention.

30. Nonetheless, two very similar judgments against Greece were rendered by the Court on 13 July 2006 (*Agga N° 3*; *Agga N° 4*),³⁵ finding anew, unanimously, violations of Article 9 of the Convention due to other prosecutions against the same applicant for the same reasons. The Court noted, as in the 2002 *Agga N° 2* case, that ‘the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing legal effects...[but they convicted him] on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi’.³⁶ Hence, the convictions were not justified by a ‘pressing social need’, provided for by the exclusion clause of Article 9, paragraph 2, of the Convention.
31. The Commissioner has additionally been informed of the serious concerns that have been expressed notably by the Greek National Commission for Human Rights with regard to a number of Muslims’ weddings by proxy (without the clear and express consent of the women concerned in most cases, including minors), which are allowed by the Sharia Law and in the past, at least until 2003, have been officiated by a Mufti and subsequently recorded in the state public records.³⁷ The National Commission deemed that this practice raised serious issues of compatibility of the above practice with the Greek Constitution that protects, inter alia, human dignity and the free development of one’s personality, as well as with provisions of international human rights treaties ratified by Greece, such as Article 23, paragraph 3, of the International Covenant on Civil and Political Rights (ICCPR) that proscribes marriages without the ‘free and full consent of the intending spouses’.³⁸
32. Even more grave concerns were expressed in 2005 by, among others, the Greek National Commission for Human Rights about the wedding of a Muslim minor girl of 11 years of age. Even though under Sharia Law the minimum age of marriage is twelve years, in that case the Mufti reportedly officiated the above wedding exceptionally ‘in order to protect the girl’s interests’.³⁹
33. The Commissioner has noted that in 2007 the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) expressed its concern about ‘the non-application of the general law of Greece to the Muslim minority on matters of marriage and inheritance’, thus leading ‘to discrimination against Muslim women, in contravention of the Greek Constitution and article 16 of the [Convention on the Elimination of All Forms of Discrimination against Women]. The Committee note[d] with concern the continuing phenomenon of early marriage and polygamy in the Muslim community notwithstanding the fact that they are in conflict with the Greek constitutional order and the [above] Convention’.⁴⁰
34. The Commissioner is aware that the decision to proceed to the application of Sharia Law in family and inheritance law matters may be taken by members of the Muslim minority in Thrace, who have, in principle, the right to choose between Greek civil law and Sharia Law. It is to be noted, however, that exceptions occur in matters relating to inheritance law where

³⁵ Available at: www.echr.coe.int.

³⁶ See §28 in both *Agga N° 3* and *Agga N° 4* judgments.

³⁷ 19 such weddings were reported in 2002 and 10 in 2003, see Greek National Commission for Human Rights, Decision on the Muslim weddings by proxy in Greece, 07/05/2003, available at: www.nchr.gr.

³⁸ See also UN Human Rights Committee, General Comment N° 19, *Protection of the family, the right to marriage and equality of the spouses*, 27/07/1990, esp. paragraph 4, available at: www.ohchr.org.

³⁹ Greek National Commission for Human Rights, *Decision on the weddings of Muslim minors officiated by Muftis in Greece*, 31/03/2005, available at: www.nchr.gr.

⁴⁰ CEDAW, Concluding Comments on Greece, 02/02/2007, paragraph 33, available at: www.ohchr.org.

the Sharia Law is strictly applied.⁴¹ The Commissioner is also informed that Sharia Law should be implemented, as a matter of principle, to the extent that its rules are not in conflict with the Greek statutory and constitutional order. In fact, Law 1920/1991 (on Muftis) provides that the domestic courts, in cases of dispute, shall not enforce decisions of the Muftis which are contrary to the Greek Constitution. A recent, legal expert report, however, has cast very serious doubts over and raised grave concerns about the effectiveness of the review and control of the Mufti judicial decisions which is carried out by domestic civil courts.⁴²

35. The Commissioner shares the comments of the above competent national and international human rights institutions whose reports have clearly indicated that the Sharia Law-related practice as outlined above, based notably on early 20th century treaties concluded between Greece and the Ottoman Empire and later Turkey, raises serious issues of compatibility with the undertakings of Greece following the ratification of the post-1948, core international and European human rights treaties, especially those relating to the human rights of the child and of women, which should, in any case, be effectively applied and prevail.
36. On many occasions during the discussion that the Commissioner held in Alexandroupolis with the aforementioned members of the Muslim minority the wish for a prevalence of and application of the 'European standards' to the Muslim minority members was stressed. In these discussions, the Commissioner was given the impression that there is a large part of the Muslim minority members who do not wish to be subject, even with the right to choose, to Sharia Law and would very much welcome its abolition in Greece. At the same time, such a development could well pave the way towards a possible direct election of a Mufti by members of the Muslim minority, a prospect that appears also to be wished for by the majority of this minority.

VI. Conclusions and Recommendations

37. The Commissioner is aware of the complexity of the minority questions that arise naturally in 'nation states', especially those of south-east Europe, a region where various civilisations have mixed and thrived in turbulent historical contexts. On many occasions, the emerged states there have not managed to view social pluralism as a valuable asset and source of development for all members of their societies. History has indeed shaped all nation states' past and present. It should not however confine or hamper their future development.
38. The Commissioner believes strongly that effective protection by states of minority groups on their territories is a necessary condition for the establishment and preservation of domestic social cohesion and international peaceful relations and cooperation of all Council of Europe member states, as provided by the Council of Europe Statute.
39. The Commissioner wishes to commend and encourage further action by the Greek authorities for enhancing the human rights of minorities, such as that on 'education of Muslim children' in Thrace, the existence of a special quota of 0.5% for entry into higher education of Muslim minority students and the introduction in 2006 of teaching of the Turkish language as a second foreign language in secondary education in Thrace.

⁴¹ By judgment 1097/2007 (16/05/2007) the Greek Supreme Court (Areios Pagos) accepted that inheritance matters of Muslim Greeks concerning unencumbered property are strictly regulated by the 'Holy Muslim Law' and never by the Greek civil code. Under 'Holy Muslim Law' inheritance is not possible, *inter alia*, by will.

⁴² See Y. Ktistakis, *Sharia Law and Muslim Greek Citizens*, Athens, Thessaloniki, Sakkoulas Publishers, 2006, pp. 117-124 (in Greek).

40. Nonetheless, the Commissioner remains deeply concerned about the persistent denial by Greek authorities of the existence on Greece's territory of minorities other than the tripartite 'Muslim' one in western Thrace, despite the recommendations made so far notably by ECRI, the UN Committee on Economic, Social and Cultural Rights and the UN Human Rights Committee.
41. The Commissioner wishes to underline in this context that any obligations that may arise out of the 1923 Lausanne Peace Treaty, or any other early 20th century treaty, should be viewed and interpreted in full and effective compliance with the subsequent obligations undertaken by the ratification of European and international human rights instruments.
42. The Commissioner wishes to recall that freedom of ethnic self-identification is a major principle in which democratic pluralistic societies should be grounded and should be effectively applied to all minority groups, be they national, religious or linguistic.⁴³
43. The Commissioner notes that Greece, like all other Council of Europe member states, is an inherently pluralistic society. The existence in it of minority groups, be they 'national', 'religious' or 'linguistic', should be considered as a major factor, not of division, but of enrichment for the Greek society. The Commissioner would like to urge the Greek authorities to show greater receptiveness to diversity in their society and take appropriate measures that would allow members of the existing, numerically small, minority groups to be effectively self-identified and express their identities.
44. The existence of tensions among members and groups of a democratic society, such as that of Greece, is an inherent element of its pluralism. The answer to tensions, though, should not be the adoption of repressive measures. As noted by the European Court of Human Rights, '[t]he role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other'.⁴⁴ Democracy and social cohesion are nurtured by dialogue and the promotion of the human rights principles to which Council of Europe member states should effectively adhere.
45. Tolerance and open, sincere dialogue between authorities and all minority groups should be nurtured and promoted as widely as possible by the national, as well as the regional and local authorities. In this regard, the Commissioner reiterates his view that the creation by the Greek government of a national human rights action plan would be highly beneficial,⁴⁵ one in which the protection of minorities should be integrated and based notably on the principles of the Framework Convention for the Protection of National Minorities (FCNM), which was signed by Greece on 22 September 1997.
46. In this context, the Commissioner calls upon the Greek government to create a consultative mechanism, at national, regional and local levels, which would ensure an institutionalised, open, sincere and continuous dialogue with representatives of different minorities and/or representatives of individual minority groups. These consultative bodies should have a clear legal status and be inclusive and representative.⁴⁶

⁴³ See also UN CERD General Recommendation No 8: *Identification with a particular racial or ethnic group*, 22/08/90: 'The Committee...[i]s of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned', available at: www.ohchr.org.

⁴⁴ See judgment in the case of *Serif v Greece*, judgment of 14/12/1999, paragraph 53.

⁴⁵ See Council of Europe Commissioner for Human Rights, Viewpoint, 'Concrete and comprehensive action plans are needed to ensure implementation of human rights', 03/11/2008, available at: www.coe.int/commissioner.

⁴⁶ See Advisory Committee of the FCNM, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008, paragraphs 106-119, available at: www.coe.int/t/dghl/monitorings/minorities/3_FCNDocs/PDF_CommentaryParticipation_en.pdf.

47. The Commissioner recalls the similar recommendation made by the previous Commissioner in his 2002 and 2006 reports on Greece, and urges once again the Greek authorities to proceed, as soon as possible, to the ratification by Greece of the FCNM and accession to the 1992 European Charter for Regional or Minority Languages⁴⁷. The Commissioner is in no doubt that the incorporation of these important Council of Europe treaties will be a major step towards the advancement of minority protection in Greece and will set an example.
48. As regards in particular freedom of association, the great importance for democracy of the freedom of establishment and functioning of associations 'seeking an ethnic identity or asserting a minority consciousness' has been emphasised by the European Court of Human Rights.⁴⁸
49. The Commissioner recalls the European Court of Human Rights' guiding principles, according to which '[t]he harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively... freedom of association is particularly important for persons belonging to minorities, including national and ethnic minorities... Indeed, forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights'.⁴⁹
50. Needless to say that there exists always a possibility for states to impose restrictions upon the right to freedom of association, in accordance with Article 11, paragraph 2, of the European Convention on Human Rights. However, it has to be stressed, in the words of the Court, that this 'power must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom'.⁵⁰
51. In addition, it is recalled that under Article 27 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Greece on 5 May 1997, in all states parties where 'ethnic, religious or linguistic minorities exist', members of such minorities may not be denied the right, 'in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'.
52. In this regard, it is to be noted that the UN Human Rights Committee has clarified that under the above provision of the ICCPR a state party 'is under an obligation to ensure that the existence and the exercise of [the above right] are protected against their denial or violation'. The UN Human Rights Committee has stressed that '[a]lthough the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group'.⁵¹ Similar provisions are found in the Framework Convention for the Protection of National Minorities (FCNM) (see e.g. Article 5),⁵² which was signed by Greece on 22 September 1997 but has not as yet been ratified.

⁴⁷ Text available at: <http://conventions.coe.int/>.

⁴⁸ See Grand Chamber judgment in the case of *Gorzelik and others v Poland*, 17/02/2004, paragraph 92.

⁴⁹ Ibid. paragraphs 92-93. See also Advisory Committee of the FCNM, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008, available at: www.coe.int/t/dghl/monitorings/minorities/default_en.asp.

⁵⁰ Grand Chamber judgment in the case of *Gorzelik and others v Poland*, 17/02/2004, paragraphs 94-95.

⁵¹ United Nations Human Rights Committee, General Comment No. 23: *The rights of minorities*, 08/04/1994, paragraphs 6.1, 6.2, available at: www.ohchr.org.

⁵² Text available at: <http://conventions.coe.int/>.

53. Indeed, the right to freedom of association is one of the fundamental prerequisites for the harmonious functioning of European democratic societies which are characterised by inherent pluralism that, in turn, should always be accompanied by tolerance and broadmindedness.⁵³ The essential contribution made by non-profit-making associations, such as non-governmental organisations, to the development and realisation of democracy and human rights was recently highlighted also by the Committee of Ministers in its Recommendation CM/Rec(2007)14 *on the legal status of non-governmental organisations in Europe*.⁵⁴
54. The Commissioner follows closely and remains concerned by the over-restrictive practice of Greek courts which by having proceeded to a preventive, in effect, control of certain applicant minority associations have refused to register them in accordance with the Civil Code, even though Article 12 of the Greek Constitution expressly proscribes the imposition of 'prior authorisation' on the formation of non-profit-making unions and associations.
55. Of even greater concern has been the radical measure of the dissolution of the minority association 'Turkish Union of Xanthi', even though this had been registered and operated in Greece under this name since 1936.
56. The Commissioner remains deeply concerned about all the aforementioned applications lodged with the European Court of Human Rights and the latter's subsequent, unanimous judgments against Greece concerning restrictions of minority members' freedom of association, which are unnecessary in a democratic society. All these cases have further strained the Court's long overburdened docket, instead of having being promptly resolved at national level, in accordance with the Court's long-established case law.
57. The Commissioner calls upon the Greek authorities to adopt urgently all necessary measures in order to make possible the operation of all minority associations, in full alignment with the European Convention on Human Rights, a ratified treaty that enjoys a supra-statutory status under Article 28, paragraph 1, of the Greek Constitution.
58. As regards the persons who were deprived of Greek nationality under former Article 19 of the Greek Nationality Code and remain in Greece, the Commissioner welcomes the efforts made by the Greek authorities and urges them to proceed to the immediate restoration of their nationality. Particular care should also be provided by the competent authorities to any of these persons who are elderly and/or with limited financial resources to cover welfare and medical services of which they are in need. As for the denationalised persons who have remained abroad and are not willing to return, the Commissioner calls upon the authorities to consider the possibility of providing them, or their descendants, with satisfaction, in accordance with the general principles of international law.
59. In this context, the Commissioner calls upon the Greek authorities to proceed promptly to the ratification of the 1997 European Convention on Nationality, which was signed on 6 November 1997, the 1963 Fourth Protocol to the European Convention on Human Rights and the 1961 UN Convention on the Reduction of Statelessness.
60. With regard to the appointed Muftis and their application of the Sharia Law, the Commissioner recommends that Greece institutionalise an open, sincere and continuous dialogue with representatives of the Muslim minority on all matters affecting their everyday

⁵³ See, inter alia, European Court of Human Rights, judgment in the case of *Handyside v United Kingdom*, 07/12/1976, paragraph 49.

⁵⁴ Available at: www.coe.int/t/cm. See also Council of Europe Commissioner for Human Rights, Conclusions on the seminar on *the role of civil society in the consolidation of modern democracy*, 14/05/2002, available at: www.coe.int/commissioner.

life and human rights. Any solutions to the issues raised in the present Report should be reached following consultations with the minority concerned and in accordance with the wish of the majority of its members.

61. The Commissioner, however, wishes to note that he is favourably positioned towards the withdrawal of the judicial competence from Muftis, given the serious, aforementioned issues of compatibility of this practice with international and European human rights standards, and towards the subsequent, direct election of the Muftis (solely as Sharia Law experts) by the members of the Muslim minority, in conformity with Article 15 and the standards set by the Advisory Committee of the Framework Convention for the Protection of National Minorities.⁵⁵ In the meantime, the Greek authorities are urged to take promptly all necessary measures for strengthening the substantive review and control by domestic courts of the Muftis' judicial decisions so that they are effectively and fully in line with the standards of international and European human rights law.
62. Finally, the Commissioner wishes to stress that he will continue to follow closely relevant developments and intends to take all necessary measures, in accordance with his mandate as an independent and impartial institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards relating to minority and human rights protection. The Commissioner stands ready to continue a sincere, constructive dialogue with and assist the Greek authorities in their efforts to remedy the shortcomings that were outlined in the present Report.

⁵⁵ See, inter alia, Advisory Committee of the FCNM, *Commentary on the Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs*, 05/05/2008, www.coe.int/t/dghl/monitorings/minorities/3_FCNMdocs/PDF_CommentaryParticipation_en.pdf.

Appendix

COMMENTS OF THE GREEK AUTHORITIES ON THE DRAFT REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE FOLLOWING HIS VISIT TO GREECE ON 8-10 DECEMBER 2008 (ISSUE REVIEWED: HUMAN RIGHTS OF MINORITIES)

Commissioner Hammarberg's report touches upon a variety of aspects within the context of the protection of minorities. It also raises the vital question of recognition of minorities.

Based on the Commissioner's report, Greece would like to note the following:

1. Muslim minority in Thrace

Greece's policy towards the Muslim minority in Thrace is being pursued on the basis of the following paramount principles and considerations:

- Full respect for Greece's obligations under both the 1923 Treaty of Lausanne, which establishes the status of the Muslim minority in Thrace, and the contemporary universal and regional human rights treaties. In conformity with the principles of equality before the law and equal enjoyment of civil rights, the Members of the Muslim minority in Thrace enjoy the same rights and are subject to the same obligations as their fellow Christian citizens.

In almost all successive parliamentary elections held since 1927, Muslims have been elected to Parliament either with the governing party or the opposition or, in most cases, on both sides of the chamber, while Muslims participate in all the levels of the Local Administration in Thrace;

- Furthermore, positive measures, such as the two quotas (0,5%) for admission of minority students to Universities and for employment in the public sector, in accordance with modern standards in the field of minority protection, have been enacted;

- Also, all steps have been taken in order to enable members of the Muslim minority, especially women and young persons, to be beneficiaries of nation-wide programmes and projects, co-financed by the European Union, designed for vulnerable social groups, in particular on gender equality, combating racism and xenophobia, equal opportunities, access to employment and inter-cultural dialogue.

- The Muslim minority has, over the last fifteen years, reaped all the benefits of Greece's long membership in the European Union, as have all other Greek citizens. This has been, and continues to be, a tangible proof of Greece's commitment to ensure the smooth integration of the minority in the social, economic and educational fabric of the country.

2. Claims on the existence of a so-called "Macedonian" minority in Greece

There is no 'Macedonian' minority in Greece. In this regard, Greece reiterates its position, that any recommendation by UN treaty bodies and, *a fortiori*, by other monitoring mechanisms, on the protection of rights of persons claiming to belong to a "minority" cannot determine the existence of a minority group or impose on States an obligation to officially recognize a group as a "minority".

As the Grand Chamber of the European Court of Human Rights stated in the *Gozelik v. Poland* case, “a definition [of “national minority”] would be very difficult to formulate. In particular, the notion is not defined in any international treaty, including the Council of Europe Framework Convention (see ... for example, Article 27 of the United Nations International Covenant on Civil and Political Rights, Article 39 of the United Nations Convention on the Rights of the Child and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities). Likewise, practice regarding official recognition by States of national, ethnic or other minorities within their population varies from country to country or even within countries.”; “ ... it cannot be said that the Contracting States are obliged by international law to adopt a particular concept of “national minority” in their legislation...” .

Within this context, it should be stressed that the non-recognition by Greece of certain groups as “minorities” is founded on solid legal and factual grounds, objective criteria and specific circumstances. At the same time, Greece fully respects the human rights of all individuals, including those who claim to belong to a “national minority”, even if this claim is unsubstantiated.

It should be noted, that in Greece, any individual who claims to belong to a distinct ethnic or cultural group is free to do so without fear of any negative consequences. Subjective claims or perceptions of a small number of individuals, which are not based on objective facts or criteria, do not establish by themselves a respective obligation of the State to officially recognize a group as a minority and to guarantee to its members specific minority rights, additional to the human rights and fundamental freedoms guaranteed by the Greek Constitution and the relevant international and regional human rights treaties.

It is worth stressing that in Greece all of its citizens enjoy the right, both in law and in practice, to freely participate in the economic, social, cultural and political life of the country. Traditional festivities and cultural events are being held regularly in the region of Florina and form integral part of the local population’s culture.

The above-mentioned festivities and events include a small group of Greek citizens, who also speak a Slavic dialect and who live in this area. Over the years, this group, which forms an integral part of the local population, has been subjected to political exploitation by entities outside Greece within a rather political context. This political approach surfaced in form of a minority-agenda propagated by only a few of this group’s members.

3. Minorities and the right to freedom of association (paras. 14-20).

In order to dismiss any misunderstandings about compliance by Greece with the right of freedom of association, it should be stressed that in Thrace a large number of Muslim minority associations and NGOs have already been registered by the competent courts and operate unimpeded, in order to protect, highlight and promote all aspects of the cultural, educational and economic life of that minority. A number of Muslim minority cultural associations have been registered by the competent courts in 2008.

In that respect, the wording of the report (para. 16) implies that there is a significant number of applications before the Court containing allegations about violations by Greece of Article 11 of the Convention. The truth is that, only three judgments of the ECHR concerning an equal number of associations have been rendered. No other applications have been communicated to the Greek authorities. At present, some of these cases are pending before the competent Greek Courts. The government is considering ways and means to implement the judgements of the ECHR.

4. Protection of minority members affected by the application of former Article 19 of the Greek Nationality Code (paras. 21-27)

The Commissioner acknowledges the concrete steps undertaken by the Greek Government in order to restore the nationality of the remaining stateless persons. He includes also in footnote no. 29 the official notification regarding the number of this group being at present less than 30.

As for the denationalised persons who have remained abroad and are not willing to return, Greece would like to stress that according to the general principles of international law the obligation to reparation results from the commission of an internationally wrongful act by the responsible State. In the present case, no decision of a judicial body has ever determined the commission of an internationally wrongful act by Greece as a result of the stripping of nationality on the basis of article 19, especially since the individuals concerned do not live in the country and have already acquired a foreign citizenship.

5. Muftis and application of the Sharia Law in Greece (paras. 28-36)

As a general remark, it is to be noted that Muftis are high ranking Muslim officials. By means of a selection procedure, in the course of which prominent Muslim personalities and theology professors are consulted, three Muftis are subsequently chosen and appointed by the Greek state, as is actually the case also in most Muslim countries. The above-mentioned procedural reglementation is necessary given the judicial authority the Muftis are vested with (namely that of applying the Sharia law in matters of family and inheritance law).

At present, as the Commissioner points out, members of the minority do have the option to take their legal cases to the Civil Courts. These Courts do also review the decisions taken by the Muftis within their jurisdiction. The Greek government takes seriously into account the relative remarks of the Commissioner (para. 61) regarding the need to strengthen the substantive review and control by domestic courts.

Furthermore, having in mind the Commissioner's point of view on the one hand and, as it stands at present, the expressed preferences and visible tendencies within the majority of the Muslim minority regarding religious, social and legal matters on the other, Greece will study any possible readjustments, such as the abolition of the Sharia law, taking hereby into account the legal obligations as well as the potential changes of the wishes of the Muslim minority.