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Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

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Meeting: 1411th meeting (September 2021) (DH)

Communication from the INGOs (The Expert Council on NGO Law of the Conference of INGOs of the Council of Europe) (10/08/2021) in the case of BEKIR-OUSTA AND OTHERS v. Greece (Application No. 35151/05).

Information made available under Rule 9.2 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 : 1411^e réunion (septembre 2021) (DH)

Communication d'OING (*The Expert Council on NGO Law* de la Conférence des OING du Conseil de l'Europe) (10/08/2021) relative à l'affaire BEKIR-OUSTA ET AUTRES c. Grèce (requête n° 35151/05) **[anglais uniquement]**

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



President

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
Email: DGI-Execution@coe.int

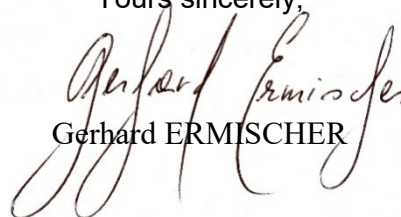
Strasbourg, 10.08. 2021

To whom it may concern,

It is with great pleasure, but also with great concern, that I transmit to you yet another contribution of the Expert Council on NGO Law of the Conference of INGOs, within the framework of supervision of the execution of judgments, regarding the case Bekir-Ousta and Others group v. Greece (Application No. 35151/05).

The Expert Council on NGO Law and myself are at your disposal for any further information.

Yours sincerely,



Gerhard ERMISCHER

DGI Directorate General of Human Rights and Rule of Law

Department for the Execution of Judgments of the ECtHR

F-67075 Strasbourg Cedex FRANCE

Email: DGI-Execution@coe.int

2 August 2021

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SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by

The Expert Council on NGO Law of the Conference of INGOs of the Council of Europe

On Bekir-Ousta and Others group v. Greece (Application No. 35151/05)

1. In our previous communication – which concerned two of the three cases in this group (*Bekir-Ousta and Others v. Greece* and *Emin and Others v. Greece*, no. 34144/05) - it was underlined that the prolonged failure to register the Evros Prefecture Minority Youth Association and the Cultural Association of Turkish Women of the Region of Rodopi was preventing both their members from enjoying the right guaranteed in Article 11 of the European Convention on Human Rights and the two associations from playing their part in the important contribution that the Committee of Ministers has recognised NGOs make to the cultural life and social well-being of democratic societies.
2. Regrettably, in the intervening ten months, that failure has still not been remedied and there continues, therefore, to be a need to provide the applicants in these two cases with a fresh opportunity to obtain the registration of the two associations through a procedure that complies with the requirements of Article 11 of the European Convention on Human Rights and Recommendation [CM/Rec\(2007\)14](#) to member states on the legal status of non-governmental organisations in Europe.
3. There has, however, been a significant but negative development in respect of the third case in this group, *TourkikiEnosiXanthis and Others*, no. 26698/05, in which the European Court of Human Rights held that the dissolution of the applicant association – which had pursued its activities unhindered for nearly half a century - was in violation of Article 11 of the European Convention on Human Rights as: no element in its title or statute that might be contrary to public policy had been identified; the promotion of an ethnic minority in Greece, supposing that this was its real aim, could

not be said to constitute a threat to democratic society; it had not engaged in activities contrary to its proclaimed objectives; and there was no evidence that the president or members of the association had ever called for the use of violence, an uprising or any other form of rejection of democratic principle.

4. The negative development in this case concerns the affirming of the dissolution of TourkikiEnosiXanthis by the Court of Cassation on 29 June 2021 in judgment No. 840/2021.
5. This ruling failed to take account of the finding in the judgment of the European Court of Human Rights that the aim and activities of the applicant association were not at all inconsistent with democratic principles. Indeed, the judgment of the Court of Cassation avers the opposite without any substantiation.
6. Moreover, this judgment not only fails to remedy the violation of Article 11 of the European Convention on Human Rights and disregards the Interim Resolutions adopted by the Committee of Ministers in 2014 and 2021 but it also compounds the violation of Article 11 by asserting that the provision in Article 27 of the applicant association's statute whereby members expressing views contrary to its aims may be expelled is contrary to the right to freedom of expression in Article 10.
7. The latter assertion reveals a complete misunderstanding of the nature of the right to freedom of association under Article 11.
8. It is correct that Article 11 is to be interpreted in the light of Article 10 and that the imposition of a sanction on a person for her or his participation in the activities of an association could entail a violation of both provisions.
9. However, it is clear from the case law of the European Court of Human Rights that, subject to the prohibition on unjustified discrimination, no one has the right to join an association (*Rutkowski v. Poland* (dec.), no. 30867/96, 16 April 2002) and no one can complain about expulsion from an association for non-compliance with its statute or constitution so long as s/he can seek remedies in court to protect her/his rights as a member, i.e., against expulsion contrary to the rules concerned (*Cheall v. United Kingdom* (dec.), no. 10550/83, 13 May 1985).
10. Moreover, the freedom of individuals to choose with whom they associate is reaffirmed in paragraph 22 of Recommendation [CM/Rec\(2007\)14](#) to member states on the legal status of non-governmental organisations in Europe.
11. There is, therefore, no basis for suggesting that the ability of the applicant association to expel members for expressing views contrary to its aims is contrary to either the right to freedom of expression or the right to freedom of association in Articles 10 and 11 of the European Convention on Human Rights.

12. The Expert Council calls upon the Committee of Ministers to:

- Call upon Greece to end the present impasse in the *Bekir-Ousta* and *Emin* cases by providing the applicants in these cases with a fresh opportunity to obtain the registration of the associations concerned through a procedure that complies with the requirements of Article 11 of the European Convention on Human Rights and Recommendation [CM/Rec\(2007\)14](#) to member states on the legal status of non-governmental organisations in Europe;
- Call upon Greece to ensure that the dissolution of TourkikiEnosiXanthis is reviewed in a manner consistent with both the judgment of the European Court of Human Rights in its judgment in application no. 26698/05 and the case law relating to Article 11 of the European Convention on Human Rights as a whole;
- Undertake to provide Greece with all necessary assistance for the training of judges on the application of the case law of the European Court of Human Rights in respect of Article 11 of the European Convention on Human Rights; and
- Maintain the Bekir-Ousta group on the agenda of every upcoming CM DH meeting, in order to apply continuous and effective scrutiny of the implementation of individual and general measures.