

On the effective implementation of human and minority rights in Europe

Panayote Dimitras
Greek Helsinki Monitor Spokesperson

August 2011

Abstract

Bulgaria, Greece, and Macedonia deny the existence in their territory of some national minorities that are perceived as “taboos” by domestic public opinion and official national histories. In recent years, these non-recognized minorities have successfully appealed to the **European Court of Human Rights** which has effectively recognized their existence. The states are expected to execute these judgments by registering the corresponding minority associations, but seem reluctant to do so. The speaker will describe the Sisyphean struggles of these minorities to impose upon the states to show the fundamental respect to their dignity they are entitled to and the reasons why two decades later very little has been achieved.

1. Introduction: minorities’ right to self-identification¹

‘All human beings are born free and equal in dignity and rights.’ Article 1 of the Universal Declaration of Human Rights entails respect for the various identities, including ethnic or national, religious or linguistic identities. It is important that everyone has the right to choose their identity (i.e. self-identification) for all humans to be ‘equal in dignity.’ Since identities can better be enjoyed with others who share the same identities, the recognition of such groups’ existence is essential. While recognition is routinely given to the identities of majority groups in states, it is often not done for a multiplicity of ethnic or national, religious or linguistic minority groups.

International standards favor the self-identification of minorities. Minorities’ recognition by states and the international community – especially the expert bodies that review the implementation of minority rights – should be in the form of acknowledging their existence, while refraining from imposing any arbitrary or discriminatory recognition criteria.

The absence of a universally agreed definition of a ‘minority’ reflects the fact that many states would have liked the definition to be restrictive, or would have used any definition in a restrictive way. Conversely, many groups, especially some indigenous peoples, are opposed to the use of the term ‘minority’ to describe themselves. A generally accepted informal definition considers minorities to be non-dominant groups, not always numerically inferior to majorities, whose members possess ethnic, religious or linguistic characteristics that differ from the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditions, religion or language.²

¹ The introduction draws from **Panayote Elias Dimitras “Recognition of Minorities in Europe: Protecting Rights and Dignity”** (Minority Rights Group International: 2004 - www.minorityrights.org/download.php?id=47). The reader is referred to that publication for an in-depth analysis of the topic.

² Minority Rights Group International **“World Directory of Minorities”** (London: 1997), p. xv.

Recognition is essential to secure the rights of minority groups in a state. Lack of recognition can lead to instability and conflict. The legal recognition of minorities and the subsequent respect of their rights contribute to peaceful coexistence. Since non-recognition hinders the enjoyment of internationally recognized rights, it leads to the violation of the economic, social and cultural rights of minorities, and to their ultimate marginalization in society.

There is a strong link between minority status and poverty, and unrecognized minorities are denied access to economic, social and political development. Recognition based on self-identification is the first step in the process of securing minority rights and safeguarding the position of members of minorities as equal members of society.

The principle of self-identification was first enunciated by the **Permanent Court of Justice** in 1930, when it ruled that a minority is '*a matter of fact, not a matter of law*'. Similarly, the first **OSCE High Commissioner on National Minorities (HCNM)**, **Max van der Stoel**, said: '*I know a minority when I see one.*'³

The **Council of Europe (CoE)** and the **United Nations (UN)** have interpreted the treaty provisions on minority rights in favor of acknowledging the self-identification of minority groups. The 1994 **General Comment** by the **UN Human Rights Committee (HRC)** on Article 27 of the **International Covenant of Civil and Political Rights (ICCPR)**,⁴ makes clear that the existence of minorities does not depend on state decisions but is to be established by objective criteria; and that non-citizens and even non-permanent residents of states qualify for protection under Article 27.

Moreover, it is spelled out that the protection of minorities' civil and political rights cannot be limited to invoking general equality before the law, equal protection by the law, and non-discrimination. All existing minorities need to be acknowledged by states, and states are urged to ensure the survival and development of the identity of all minorities.

2. Non-recognition of "taboo" minorities in Bulgaria, Greece, and Macedonia⁵

One of the most "insecure" countries on issues of minority rights is Greece, which has repeatedly stated that it recognizes a religious minority, that of the Muslims, but no ethnic, national or linguistic ones. Greek public opinion and the intellectual community have been profoundly conditioned to think in these "nationally correct" terms. They not only strongly deny the existence of any other ethno-national group within Greece, namely Turks and Macedonians (let alone any related discrimination or other human rights violation) but go as far as denying the ethno-national identity of some minorities in neighboring countries even though the latter are officially recognized therein. The 1999 Kosovo crisis gave ample evidence that, for all Greek media and politicians, the majority of the region's population was made up of "Albanophones" rather than "Albanians." Even when translating speeches of foreigners, including Milosevic, the media used "Albanophones"

³ Keynote Address of **Mr Max van der Stoel** **CSCE High Commissioner on National Minorities** at the **CSCE Human Dimension Seminar on "Case Studies on National Minority Issues: Positive Results"** Warsaw, 24 May 1993 (<http://www.osce.org/hcnm/38038>)

⁴ [http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)

⁵ This section draws from **Panayote Dimitras** and **Nafsika Papanikolatos** "*Reflections on Minority Rights Politics for East Central European Countries*" in **Will Kymlicka** and **Magda Opalski** (eds.) "**Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe**" (Oxford University Press: 2002 - http://books.google.com/books?id=NNWHtqBJcGwC&pg=PA186&lpg=PA186&dq=%22Reflections+on+Minority+Rights+Politics+for+East+Central+European+Countries%22&source=bl&ots=czMYt3gSPn&sig=GvZFGZWbwYhSxOiyFpbizfX87fs&hl=en&ei=4Ak8Tt2yL8zt-gavisnoDQ&sa=X&oi=book_result&ct=result&resnum=2&ved=0CCQQ6AEwAQ#v=onepage&q=%22Reflections%20on%20Minority%20Rights%20Politics%20for%20East%20Central%20European%20Countries%22&f=false).

The reader is referred to that publication for an in-depth analysis of the topic.

instead of “Albanians”. Bulgaria may have recognized a Turkish community on its territory, but many in Greece prefer to refer to that minority in the Greek way, as “Muslims.”

Bulgaria, though, is a separate example. It officially claims that it has no “minorities,” just “minority groups”. They believe that this semantic difference will ward off the issue of potential secessionism. “Naturally”, Macedonians are not among these groups, just as Bulgarians are not among the officially recognized minorities in Macedonia.

Minorities’ unwillingness to see each other’s demands as similar and thus work together to achieve them is a further obstacle to progress. Even formally trans-minority parties, like those in Albania and Bulgaria, function more as vehicles for the interest of one minority, as is the case with Greeks in Albania and Turks in Bulgaria. In both cases, Greek and Turkish minority leaders have stated that there is no Macedonian nation and no Macedonian minority in Greece and Bulgaria, thereby aligning themselves with Greek and Bulgarian hegemonic nationalism. Minority groups in Greece also hope that by courting the country’s intolerant nationalism they will improve their own situation within Greece. To this end Greek Catholics and Greek Jews have sent appeals to their fellow believers around the world stressing the “historical” Greek character of Macedonia; the Jews even based their arguments on their ancient holy books. For their part, Aromanians (Vlachs) and Arberor (Arvanites) organizations refuse to join forces with Macedonians (and Turks) to enable Greece, like all other EU countries, to support the effective establishment of a national office of the **European Bureau for Lesser-Used Languages**. Even the Roma, much despised by the Greek state, have rallied to the struggle with among other things lyrical contributions on the Greekness of Macedonia. They are also reluctant to work with international Romany organisations which, they have been led to believe, are suspect and potentially “anti-Greek”.

The reason why the three states do not recognize these ethnonational minorities is the impact of historical developments in the past century. When competing for the acquisition of the then Ottoman province of Macedonia in the beginning of the 20th century, Bulgaria, Greece and Serbia had to be able to claim the allegiance of the main population group in the region which was speaking a Slavic language more akin to Bulgarian than Serbian. For Greece and Serbia, it was important to deny that these people had any ethnic links with Bulgaria; hence it was unimaginable to acknowledge a Bulgarian identity for them. For Greece this has meant a denial that any Macedonians have existed on its territory, a claim that was enriched with a complete denial that an ethnonational group anywhere can be called Macedonians, as the name associated with ancient Macedonians was supposed to be part of ancient Greece’s cultural heritage. Conversely, Bulgaria could acknowledge only a Bulgarian identity for the Slavic speakers throughout Macedonia and the existence of only one language for all of them Bulgarian. Finally, when in post-World War II Yugoslavia a Federal Macedonian state was created, which in 1991 became an independent Macedonian state, it inherited the denial that any Bulgarians could exist on its territory.

The denial of the existence of Turks in Greece has more recent roots. In fact, from the time Western Thrace was incorporated in the Greek state with the Treaty of Lausanne (1923) through the establishment of a military regime in 1967, Greece was recognizing the Muslims of Thrace as Turks. However, the Greek-Turkish conflict over Cyprus and the Aegean Sea since 1963 has created a major tension between the two countries which led the Greek authorities military in 1967-1974 and civilian since 1974 alike to forbid the naming of that minority as Turks and insist that it is a Muslim minority consisting of “Turkish-origin” (not Turks), Pomaks (Muslims speaking a Bulgarian dialect) and Roma.

3. Successful applications to the European Court of Human Rights

The consequence of the refusal to acknowledge the existence of Macedonians in Bulgaria and in Greece, of Bulgarians in Macedonia, and of Turks in Greece was reflected in the refusal by the authorities to register minority associations with such names or the dissolution of such associations previously registered. Invariably, all these associations, after having exhausted domestic remedies, appealed to the **European Court of Human Rights** (ECtHR). Without exception, the ECtHR has found Bulgaria, Greece, and Macedonia in violation of Article 11 of the **European Convention of Human Rights** (ECHR) that guarantees freedom of association, often in combination with other articles of the ECHR.

*a. One ECtHR judgment on Macedonia's Bulgarians (2009)*⁶

The most recent judgment, published on 15 January 2009, concerns the *Case of Association of citizens Radko & Paunkovski v. Macedonia*. Macedonia (named in the judgment as “the former Yugoslav Republic of Macedonia”) was found to have violated Article 11 of the ECHR when the association was dissolved in 2001 soon after its initial registration in 2000. In its reasoning the ECtHR reiterated its related case law that was developed in large part in judgments on cases filed by Macedonian minority associations in Bulgaria and Greece.

The ECtHR made once again clear that any minority association whose aims are pursued without advocacy of or actual use of illegal or anti-democratic means and can therefore not present a real threat to the society or the state cannot be dissolved or even pro-actively denied registration. This holds even if that association bears a name that may arouse hostile reactions among the population, and/or includes in its program or ideology the denial of the identity of the ethnic majority of the population.

The ECtHR stated that any measure of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.⁷

*b. Seven ECtHR judgments on Bulgaria's and Greece's Macedonians (1998-2006)*⁸

The ECtHR published on 19 April 2006 its judgment in the *Case of UMO Ilinden and others v. Bulgaria* finding Bulgaria in violation of Article 11 of the ECHR because it had violated the freedom of association of the Macedonian minority organization **United Macedonian Organization (UMO) Ilinden** [thereafter “UMO”] by refusing its registration in 1998-1999,⁹

⁶ GHM and Minority Rights Group-Greece (MRG-G) background material on Bulgarians in Macedonia available at: <http://www.greekhelsinki.gr/special-issues-Bulgarians-of-Macedonia.html>

⁷ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=845479&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application 74651/01). Significant excerpts are available in Appendix 1.

⁸ GHM and Minority Rights Group-Greece (MRG-G) background material on the Macedonian minorities available at: http://www.greekhelsinki.gr/bhr/english/special_issues/macedonians_in_greece.html (through 2004) and <http://cm.greekhelsinki.gr/index.php?sec=194&ctg=220> (from 2005 on). GHM and MRG-G comprehensive reports on Macedonians in Greece available at: http://www.greekhelsinki.gr/bhr/english/articles/the_macedonians.doc and http://www.greekhelsinki.gr/bhr/english/organizations/ghm/ghm_sofs_30_03_02.rtf. GHM and MRG-G comprehensive report on Macedonians in Bulgaria available at: <http://www.greekhelsinki.gr/pdf/cedime-se-bulgaria-macedonians.doc>.

⁹ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=791690&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>(application 59491/00)

which it had also done in 2002-2004, a refusal that is an object of a new application under consideration by the ECtHR.

A few months before, on 24 November 2005 and on 20 October 2005, the ECtHR published four judgments, finding Bulgaria and Greece in violation of Article 11 of the ECHR. In the *Case of Ivanov and Others v. Bulgaria* [thereafter “Ivanov”]¹⁰ Bulgaria had violated twice the freedom of assembly of the Macedonian minority political party **UMO Ilinden – PIRIN** in 1998. In the *Case of UMO Ilinden and Ivanov v. Bulgaria* [thereafter “UMO-I”]¹¹ Bulgaria had violated several times the freedom of assembly of the Macedonian minority organization **UMO Ilinden** in 1998-2003. In the *Case of UMO Ilinden – PIRIN and others v. Bulgaria* [thereafter “UMO-I-P”]¹² Bulgaria had violated the freedom of association of the Macedonian minority political party **UMO Ilinden – PIRIN** founded in 1998 by dissolving it in 2000. In the *Case of Ouranio Toxo and others v. Greece* [thereafter “OT”]¹³ Greece had violated the freedom of assembly and association of Macedonian minority political party **Ouranio Toxo (Vinozito)** when on 13-14 September 1995, following demonstrations lead by local officials, its seat in Florina was sacked and some of its leaders injured with the police failing to act and subsequently the judicial to prosecute the perpetrators.

There were also two previous cases on Macedonians in Bulgaria and Greece, referred to in the 20 October 2005 judgments. On 2 October 2001, in the *Case of Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* [thereafter “Stankov”]¹⁴ Bulgaria had been found to have violated several times the freedom of assembly of the Macedonian minority organization **UMO Ilinden** in 1994-1997. Finally, on 10 July 1998, in the *Case of Sidiropoulos and others v. Greece* [thereafter “Home”]¹⁵ Greece had been found to have violated the freedom of association of the Macedonian minority organization **Home of Macedonian Civilization** by refusing its registration in 1990-1994, which it had also done in 1999-2009, a refusal that is an object of a new application under consideration by the ECtHR.

In these judgments, the ECtHR defined the extent to which provocative action and even separatist aims are acceptable in democracies.

As regards the alleged dangers stemming from Ilinden’s goals and declarations, the Court considered that the refusal to register the association was not necessary to protect the territorial integrity of the country, public order or the rights and freedoms of the majority of the population in the region in question. The Court reiterated in this respect that the fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory - thus demanding fundamental constitutional and territorial changes - cannot automatically justify interferences in their rights under Article 11. Concerning the applicant organisation’s virulent style and its acerbic criticism of the authorities’ actions, the Court recalled that the freedom of expression protects not only «information» or «ideas» that are favourably received or regarded as inoffensive or as matter of indifference, but also those that offend, shock or disturb the state or any sector of the population

¹⁰<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=790221&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application no. 46336/99)

¹¹<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=788283&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application no. 44079/98)

¹²<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=788326&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application no. 59489/00)

¹³<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=788314&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application no. 74989/01 – judgment in French) and <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=788315&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (English excerpts)

¹⁴<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=697566&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (applications no. 29221/95 and 29225/95)

¹⁵<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696082&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application no. 26695/95)

1. The ECtHR acknowledged the presence of Macedonian minorities in Greece and Bulgaria, contrary to the two states' official policy. Furthermore, it recalled and expanded on its case-law (the "Home") that *"mention of the consciousness of belonging to a minority and the preservation and development of a minority's culture could not be said to constitute a threat to 'democratic society', even if this may cause tensions. In fact, the emergence of tensions is an inevitable consequence of pluralism, that is of the free debate on every political idea. In such case, the role of the authorities is not to eliminate the cause of tensions by suppressing pluralism, but to make sure that competing political groups tolerate each other."* ("OT").

2. Going even further, the Court *"recalls that in a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly, as well as by other lawful means."* ("UMO-I" and "Stankov"). Such challenging ideas include the advocacy of autonomy and secession: *"The Court reiterates, however, that the fact that a group of persons calls for autonomy or even requests secession of part of the country's territory – thus demanding fundamental constitutional and territorial changes – cannot automatically justify a prohibition of its assemblies [or other] interferences in their rights under Article 11 [dissolution]. Demanding territorial changes in speeches and demonstrations does not automatically amount to a threat to the country's territorial integrity and national security."* ("Stankov" and "UMO"). *"Concerning the applicant organisation's virulent style and its acerbic criticism of the authorities' actions, the Court recalled that the freedom of expression protects not only «information» or «ideas» that are favourably received or regarded as inoffensive or as matter of indifference, but also those that offend, shock or disturb the state or any sector of the population"* ("UMO"). *"Even if it was not unreasonable for the authorities to suspect that certain leaders of UMO Ilinden – PIRIN (which was later declared unconstitutional – see paragraph 11 above), or small groups which had developed from it, harboured separatist views and had a political agenda that included the notion of autonomy for the region of Pirin Macedonia or even secession from Bulgaria and could hence expect that separatist slogans would be broadcast by some participants during the planned rallies, such a probability could not per se justify their banning."* ("Ivanov"). *"However shocking and unacceptable the statements of the applicant party's leaders and members may appear to the authorities or the majority of the population and however illegitimate their demands may be, they do not appear to warrant the impugned interference [dissolution]. The fact that the applicant party's political programme was considered incompatible with the current principles and structures of the Bulgarian State does not make it incompatible with the rules and principles of democracy. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself... It thus appears that the Constitutional Court's holding that the applicant party's activity truly 'imperil[ed] [Bulgaria's] national security' was not based on an acceptable assessment of the relevant facts."* ("UMO-I-P").

3. The Court is critical of Greek authorities (town council, police, public prosecutor, "O.T."). Instead of *"defending and promoting the values inherent in a democratic system, such as pluralism, tolerance and social cohesion, ... they stirred up confrontational attitudes, ... had not taken adequate measures to avoid or, at least, contain the violence..., while the public prosecutor had not considered it necessary to start an investigation in the wake of the incidents to determine responsibility."* Likewise, it is critical of Bulgarian authorities ("UMO-I): *"It is also noteworthy that on one of the occasions when they did not interfere with the applicants' freedom of assembly, the authorities appeared somewhat reluctant to protect the members and followers of Ilinden from a group of counter demonstrators... The authorities were therefore bound to take adequate measures to prevent violent acts directed against the participants in Ilinden's rally, or at least limit their extent. However, it seems that they, while embarking on certain steps to enable the organisation's*

commemorative event to proceed peacefully, did not take all the appropriate measures which could have reasonably been expected from them under the circumstances.”

4. In “UMO-I,” which partly concerned bans of the organization’s public commemorations, “*the Court notes with concern that one of the bans was imposed, with almost identical reasoning, even after similar measures had been declared contrary to Article 11 in the Court’s judgment in “Stankov”*. Bulgaria was in fact cited for insisting on actions contrary to a previous Court ruling. Should the “UMO” and “Home” cases reach the Court again (as Bulgaria and Greece persist in not registering those associations), similar concerns are expected to be made.

5. Finally, “*the Court accepts that the use of the term ‘vino-zito’ certainly aroused hostile sentiment among the local population. Its ambiguous connotations were liable to offend the political or patriotic views of the majority of the population of Florina. However, the risk of causing tension within the community by using political terms in public does not suffice, by itself, to justify interference with freedom of association.*” [“OT”]. It is noteworthy that there is a factual mistake. It is mentioned that the sign affixed to the “Rainbow (Ouranio Toxo)” party offices “*included the word ‘vino-zito’, written in the ‘Slav alphabet’, which means ‘rainbow’ in Macedonian, but was also the rallying cry of forces who had sought to take the town of Florina during the civil war in Macedonia.*” [“OT”] This was never claimed by anyone in Greece. In 1994, the newly founded Macedonian party chose the name of the European Parliament (EP)’s political group of minority parties “Rainbow,” as it ran in that year’s election to the EP under their banner. There was another part of the sign that was considered provocative, as mentioned in the court’s indictment against that party: “*Among other words written therein, there were the words “Lerinski Komitet” written in a Slavic linguistic idiom. These words, in combination with the fact that they were written in a foreign language, in the specific Slavic linguistic idiom, provoked and incited discord among the area’s citizens. The latter justifiably, besides other things, identify these words with an old terrorist organization of Slavic-speaking alien nationals which was active in the area and which, with genocide crimes, pillages and depredations against the indigenous Greek population, attempted the annihilation of the Greek element and the annexation of the greater area of the age-long Greek Macedonia to a neighboring country, which at the time was Greece’s enemy.*” (see GHM and MRG-G “**Greece against its Macedonian minority: the Rainbow trial,**” 1998, available at: <http://www.greekhelsinki.gr/pdf/rainbow-english.pdf>). The word “Komitet” has been associated in Greece with pro-Bulgarian forces in the “Macedonian struggle” in the early 1900s, while the area was still under Ottoman rule, and also during the Axis occupation of the area in the Second World War.

*c. Three ECtHR judgments on Greece’s Turks (2007-2008)*¹⁶

On 27 March 2008, the ECtHR published two judgments, finding Greece in violation of Article 11 of the ECHR. In the *Case of Emin and others v. Greece*,¹⁷ Greece had violated the freedom of association of the Turkish minority organization **Cultural Association of Turkish Women of the Region of Rodopi** by refusing its registration in 2001-2005. In the *Case of Tourkiki Enosi Xanthis and others v. Greece*,¹⁸ Greece had violated the freedom of association of the Turkish minority organization **Turkish Association of Xanthi** by dissolving an association first established in 1927, after a 21-year domestic courts procedure (1983-2005).

¹⁶ GHM and Minority Rights Group-Greece (MRG-G) background material on the Turks in Greece available at: http://www.greekhelsinki.gr/bhr/english/special_issues/turks_in_greece.html and <http://cm.greekhelsinki.gr/index.php?sec=194&ctg=224>.

¹⁷ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830309&portal=hbkm&source=externalbydocn umber&table=F69A27FD8FB86142BF01C1166DEA398649> (application 34144/05)

¹⁸ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=830307&portal=hbkm&source=externalbydocn umber&table=F69A27FD8FB86142BF01C1166DEA398649> (application 26698/05)

A few months earlier, on 11 October 2007, the ECtHR had published a judgment finding Greece in violation of Article 11 of the ECHR. In the *Case of Bekir-Ousta and others v. Greece*,¹⁹ Greece had violated the freedom of association of the Turkish minority organization **Department of Evros Minority Youth Association** by refusing its registration in 1995-2006 because its title was supposed to possibly imply the existence of a non-recognized ethnic minority as opposed to the recognized religious minority.

The ECtHR's core argument condemning the non-democratic attitude towards ethnic minorities whose existence is a historical fact was: *"The Court observed that even supposing that the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to democratic society. It reiterated that the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law. The Court also considered that it could not be inferred from the factors relied on by the Thrace Court of Appeal that the applicant association had engaged in activities contrary to its proclaimed objectives. Moreover, 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 principles. The Court considered that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country."*

4. The execution of judgments of the European Court of Human Rights²⁰

The **Council of Europe** states undertake to abide by the final judgments of the ECtHR in the cases to which they are parties. The ECHR entrusts the **Council of Europe's Committee of Ministers** with the supervision of ECtHR judgments.

Most judgments only declare the violations established, leaving to the States, under the supervision of the Committee of Ministers, to define the required execution measures. These measures depend on the circumstances of each case. In a certain number of recent judgments, in particular those concerned by the pilot judgment procedure, the ECtHR has, however, started to make certain recommendations with respect to execution.

When exercising its supervisory function, the Committee of Ministers is assisted by the Department for the Execution of Judgments of the Court (established within the Directorate General of Human Rights and Legal Affairs).

The obligation to abide by the judgments encompasses two main elements. As far as the applicant's individual situation is concerned, the main obligation is to ensure that measures are taken which achieve, as far as possible, restitutio in integrum for the applicant. Such measures include notably the effective payment of the just satisfaction allocated by the Court (including the payment of default interests in case of belated payment). When the consequences of a violation cannot be adequately erased by the just satisfaction awarded, the Committee of Ministers is empowered to make sure that the domestic authorities take the other specific individual measures in favor of the

¹⁹ <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=824383&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649> (application 35151/05)

²⁰ This section draws from the Council of Europe's official web site on supervision of execution of ECtHR judgments http://www.coe.int/t/dghl/monitoring/execution/default_EN.asp and http://www.coe.int/t/dghl/monitoring/execution/Presentation/About_en.asp

applicant which may be required. Such measures can, for example, consist in the granting of a residence permit, the reopening of a judicial procedure and/or the erasure of a conviction from the criminal records, and in the cases concerned here the (re-)registration of the minority associations and the granting of permission to hold public meetings.

On a more general level, the obligation also includes the prevention of violations similar to those found by the ECtHR. General measures which may be necessary include notably constitutional changes or legislative amendments, changes in the case-law of the national courts, as well as practical measures, such as the recruitment of judges or refurbishing obsolete prison facilities. The efficiency of domestic remedies is an important element of general measures and States are notably recommended by the Committee of Ministers to review, following ECtHR judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing remedies and, where necessary, set up effective ones, in order to avoid repetitive cases being brought before the ECtHR.

In view of the direct effect occasionally given to the ECtHR judgments by national courts and authorities in some countries, the mere publication and dissemination of the judgments, where necessary translated and with accompanying instructions/recommendations, is in many circumstances sufficient to achieve the changes in law and practice necessary to prevent new violations and ensure the effectiveness of domestic remedies.

As to the supervision procedure, it is based on “action plans” and “action reports” submitted by the respondent State to the Committee of Ministers. Since 2011, the Committee of Ministers supervises the execution process, and in particular the adoption and implementation of action plans, through a new twin track procedure: a standard one for most cases and an enhanced procedure for cases requiring urgent individual measures or revealing important structural problems (notably pilot judgments). Where necessary, the Committee may intervene to support the execution process, notably through decisions and interim resolutions with suggestions and recommendations.

Following the entry into force of Protocol No. 14, on 1st June 2010, the Committee can refer a case to the ECtHR, if it considers that the execution of the judgment is hindered by a problem of interpretation of the judgment, or if it considers that the respondent state is refusing to abide by the judgment.

Where the Committee of Ministers considers that all execution measures required have been adopted, it closes its examination of the case by adopting a final resolution.

5. The execution of judgments on minority organizations by Bulgaria, Greece and Macedonia

a. Execution of the one ECtHR judgment on Macedonia’s Bulgarians

The execution of the most recently published judgment (*Case of Association of citizens Radko & Paunkovski v. Macedonia* - published on 15 January 2009) appears to be the one with the most interesting development. According to the Committee of Ministers, “On 26/05/2011, the authorities of the respondent State informed the Committee that on 17/05/2011 the Supreme Court had quashed the decisions of the Administrative Court and the second-instance registration authority and remitted the case to the registration authority for re-examination. The Supreme Court also indicated that the registration authority should take into consideration the judgment of the European Court in assessing the applicant association’s request, as well as the new Law on Associations and Foundations adopted in April 2010. Pursuant to this law, the registration authority no longer has the power to assess the lawfulness of the registration documents. The authorities also indicated that the new Law on Associations and Foundations is aimed at

facilitating the registration of associations.”²¹ It can be hoped that the registration authority will comply with the Supreme Court’s decision and will register the Bulgarian minority organization, which will be a development made possible by the ECtHR judgment. In such a case, pressure on Bulgaria and Greece to follow the example of Macedonia is expected to increase.

b. Execution of the seven ECtHR judgments on Bulgaria’s and Greece’s Macedonians

The execution of the judgments in the *Case of UMO Ilinden and Ivanov v. Bulgaria* and in the *Case of Ivanov and Others against Bulgaria* as well as in the previous *Case of Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* has been considered by the Committee of Ministers as satisfactorily completed with resolutions adopted on 8 June 2011 and 22 December 2004.²² Therein it is mentioned that the public meetings of Macedonian minority organizations **UMO Ilinden** and **UMO Ilinden - PIRIN** have been allowed (almost) regularly since 2008, with a few exceptions that are the object of new applications to the ECtHR (along with bans of meetings since 2004), and that no related ban was registered in 2010. A similar development is expected for the *Case of Ouranio Toxo and others v. Greece* as there have been no new incidents against **Ouranio Toxo – Vinozito**’s office.²³ Macedonians in Bulgaria and Greece, as a result of these judgments, are henceforth able to assemble freely.

However, none of the three Macedonian minority organizations has been registered in Bulgaria or in Greece, because domestic courts in both states refuse to confirm themselves with the ECtHR judgments mainly arguing that they cannot register associations claiming to represent non-existent ethnic minorities.

Thus, the ECtHR will soon consider a new application against Greece by the **Home of Macedonian Civilization** against the persistent refusal of its registration in 1999-2009 on the grounds that “*there is no Macedonian nation, and hence no Macedonian culture and no Macedonian language ‘Makedoncki;’ nor does there exist in Greece a ‘Macedonian minority;’ it is self-evident that a mosaic of nations cannot in a period of sixty years acquire and ethnic existence, based on forged elements.*”²⁴ It is noteworthy that the Committee of Ministers’ supervision mechanism was much weaker in earlier years; as a result, the supervision of the execution was satisfactorily completed with a resolution adopted on 24 July 2000, on the basis of Greek government information that “*no similar violation of the Convention has been found, which confirms the exceptional nature of the case... the Government of Greece is of the opinion that, considering the direct effect today given to judgments of the European Court in Greek law (...), the Greek courts will not fail to prevent the kind of judicial error that was at the origin of the violation found in this case.*”²⁵

Moreover, in Bulgaria, “*UMO Ilinden is not registered despite numerous attempts it made. The refusals so far are subject to another case, which is under consideration by the Court. Apart from UMO Ilinden, other organizations of ethnic Macedonians are also routinely denied registration... In both decisions of the Sofia Appellate Court the blunt argument had been that ‘in Bulgaria there is no separate Macedonian ethnicity’ and that the goals of both NGOs contradict article 44, para 2 of the Constitution of Bulgaria, which prohibits organizations whose activities are ‘contrary to the*

²¹http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=74651%2F01&StateCode=&SectionCode=

²²https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM/Del/Dec%282011%291115&Language=lanEnglish&Ver=volres&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864#P962_53259 and https://wcd.coe.int/wcd/ViewDoc.jsp?id=806725&Site=COE#P694_60196

²³http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=Ouranio+Toxo&StateCode=&SectionCode=

²⁴ **Kozani Court of Appeals** Judgment 243/2005 dated 16 December 2005

²⁵<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=693773&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

country's sovereignty and national integrity, or the unity of the nation'.²⁶ The supervision of the execution of this case is pending before the Committee of Ministers.²⁷ Additionally **UMO Ilinden - PIRIN** after three domestic applications (2006-2009) were rejected continues not to be registered. Yet, the Committee of Ministers considered that since “*the applicants can at present apply for the registration of their party in proceedings which are in conformity with Article 11 of the Convention*” the supervision of the execution was satisfactorily completed with a resolution adopted on 3 December 2009.²⁸ **UMO Ilinden – PIRIN** has filed new applications to the ECtHR.

c. Execution of the three ECtHR judgments on Greece's Turks

The three Turkish minority organizations **Cultural Association of Turkish Women of the Region of Rodopi**, **Turkish Association of Xanthi**, and **Department of Evros Minority Youth Association** have all filed since 2008 before domestic courts applications to have previous decisions annulled and thus (re-register). All judgments thus far are negative and the cases are pending before the Appeals Court or the Supreme Court.²⁹ On 3 May 2010, **Minister of Justice Haris Kastanidis**, speaking before Parliament, agreed with the decisions of the Greek courts stating that “*Greek courts rule – correctly in my opinion- that the internal rule of law cannot change because of a different case-law of the ECtHR.*”³⁰

6. Conclusion: on the (in)effective implementation of human and minority rights in Europe

The examination of the fate of the applications to the ECtHR by Bulgarian, Macedonian, and Turkish organizations in Bulgaria, Greece and Macedonia and of the developments after the issuing of judgments in favor of the applicant minorities and against the corresponding states indicates that the ECtHR has been a powerful tool for the international recognition of these minorities: UN and Council of Europe expert reports on these countries, which are a form of “soft law,” rely significantly on these judgments to register as violations those countries’ refusal to recognize these minorities. However, these judgments have to this day failed to secure those minorities’ domestic recognition, at least in Bulgaria and in Greece. On the other hand, these judgments appear to have been the main reason that Bulgaria and Greece have stopped violating the freedom of assembly of these minorities. Yet, it is clear that the supervision of the execution of judgments by the Committee of Ministers, which is a political body, is not as comprehensive and in the end objective as the judgments issued by the ECtHR, which is body of independent judges. It is expected that it will be the ECtHR with new future judgments in such cases, perhaps setting in motion the pilot judgment procedure that allows it to include specific recommendations for the execution of its judgments that the states are to fulfill within short deadlines, that will succeed to impose upon the recalcitrant states the recognition of these “taboo” minorities.

²⁶ “Written Notes by the Bulgarian Helsinki Committee to the Committee of Ministers of the Council of Europe concerning the case ‘United Macedonian Organization Ilinden and Others v. Bulgaria’” ([http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Bulgarie/DD\(2011\)249.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Info_cases/Bulgarie/DD(2011)249.pdf))

²⁷ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=59491%2F00&StateCode=&SectionCode=

²⁸ https://wcd.coe.int/wcd/ViewDoc.jsp?id=1554569&Site=CM#P590_31954

²⁹ http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=bekir-ousta&StateCode=&SectionCode=

³⁰ http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100503_1.pdf

**Appendix 1: Excerpts from the ECtHR judgment in
the Case of Association of citizens Radko & Paunkovski v. Macedonia**

69. On 21 March 2001 the Constitutional Court declared the Association's Articles and Programme null and void. According to the Constitutional Court, the Association's true objectives were the revival of Ivan Mihajlov-Radko's ideology according to which "... *Macedonian ethnicity never existed ..., but belonged to the Bulgarians (Болзату) from Macedonia and its recognition (i.e. that of Macedonian ethnicity) was the biggest crime of the Bolshevik headquarters committed during its existence*" (see paragraph 27 above). That court further noted that the founders of the Association, as Ivan Mihajlov's "*ideological companions*" (see paragraph 16 above), had sought to celebrate and continue his work. It declared the Association's Articles and Programme unconstitutional as "*every activity aimed at denunciation of its [Macedonian] identity is in fact directed towards violent destruction of the constitutional order of the Republic and towards encouragement of or incitement to national or religious hatred or intolerance and towards denunciation of the free expression of its national affiliation*".

70. In this context, the Court considers that this case should be distinguished from the *Stankov* case (*Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, cited above, § 10) in which the applicants claimed "*recognition of the Macedonian minority in Bulgaria*", as opposed to the present case in which the national identity of certain people was called into question.

71. The Court recalls that the freedom of association is not absolute, however, and it must be accepted that where an association, through its activities or the intentions it has expressly or implicitly declared in its programme, jeopardises the State's institutions or the rights and freedoms of others, Article 11 does not deprive the State of the power to protect those institutions and persons. Moreover, the statute and programme cannot be taken into account as the sole criterion for determining its objectives and intentions. An association's programme may conceal objectives and intentions different from the ones it proclaims. To verify that it does not, the content of the programme must be compared with the actions of the association's members and the positions they defend. Taken together, these acts and stances may be relevant in proceedings for the dissolution of an association, provided that as a whole they disclose its aims and intentions (see *Gorzelik and Others*, cited above, § 58 and *Refah Partisi (the Welfare Party) and Others*, cited above § 101).

72. The Court, however, notes that the Constitutional Court made no suggestion that the Association or its members would use illegal or anti-democratic means to pursue their aims. The Constitutional Court did not provide any explanation as to why a negation of Macedonian ethnicity is tantamount to violence, especially to violent destruction of the constitutional order. Even in the proceedings before this Court, the respondent Government did not present any evidence that the applicants had advanced or could have advanced the use of such means. Despite the Government's views about a certain historical context, the Constitutional Court did not characterise the Association as "terrorist". Indeed, there was nothing in the Association's constitutive acts to indicate that it advocated hostility. Moreover, that court did not even make any reference to the incident that occurred at the opening ceremony.

73. It transpires therefore that the crucial issue in declaring the Association's constitutive acts null and void was the name of the Association and the teaching which Ivan Mihajlov-Radko pursued during his lifetime. That was implicitly confirmed by the Government in their observations.

74. It is undisputed that the creation and registration of the Association under the pseudonym of Ivan Mihajlov "Radko", generated a degree of tension given the special sensitivity of the public to his ideology, which was generally perceived by the Macedonian people not only as offensive and destructive, but as denying their right to claim their national (ethnic) identity. Even the applicants

agreed that their ideas “*related to the proper interpretation of the history of Macedonia and ethnic Bulgarians in Macedonia*” might have been regarded as hostile and offensive by many citizens of the former Yugoslav Republic of Macedonia. The strong public interest was manifested by the media campaign and the tension became evident at the Association’s opening ceremony, when smoke bombs were thrown and a journalist was severely injured.

75. Under those circumstances, the Court cannot but accept that the name “Radko” and his or his followers’ ideas were liable to arouse hostile sentiments among the population, given that they had connotations likely to offend the views of the majority of the population. However, the Court considers that the naming of the Association after an individual who was negatively perceived by the majority of population could not in itself be considered reprehensible or to constitute in itself a present and imminent threat to public order. In the absence of any concrete evidence to demonstrate that in choosing to call itself “Radko” the Association had opted for a policy that represented a real threat to the Macedonian society or the State, the Court considers that the submission based on the Association’s name cannot, by itself, justify its dissolution (see, *mutatis mutandis*, *Ouranio Toxo and Others*, cited above, §41 and *United Communist Party of Turkey and Others*, cited above, §54).

76. The Court reiterates its case-law, under which a State cannot be required to wait, before intervening, until an association had begun to take concrete steps to implement a policy incompatible with the standards of the Convention and democracy (see, *mutatis mutandis*, *Refah Partisi (the Welfare Party) and Others*, cited above, § 102). However, sweeping measures of a preventive nature to suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it. One of the principal characteristics of democracy is the possibility it offers of resolving problems through dialogue, without recourse to violence, even when those problems are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a group solely because it seeks to debate in public certain issues and to find, according to democratic rules, solutions (see *Çetinkaya v. Turkey*, no. 75569/01, § 29, 27 June 2006; *Stankov and the United Macedonian Organisation Ilinden*, cited above, §§ 88 and 97; and *United Communist Party of Turkey and Others*, cited above, § 57). To judge by its constitutive acts, the Court considers that that was indeed the Association’s objective. In addition, the Association confined itself to realising these objectives by means of publications, conferences and cooperation with similar associations. The Association’s choice of means could hardly have been belied by any practical action it took, since it was dissolved soon after being formed and accordingly did not even have time to take any action. It was thus penalised for conduct relating solely to the exercise of freedom of expression. In this connection, the Court points out that it is not in a position nor is it its role to take the side of any of the parties as to the correctness of the applicants’ ideas. It is therefore without relevance that the applicants did not distance themselves explicitly from what the Constitutional Court established as the Association’s real aim.

77. The Court also considers that there is no need to bring Article 17 into play as nothing in the Association’s Articles and Programme warrants the conclusion that it relied on the Convention to engage in activity or perform acts aimed at the destruction of any of the rights and freedoms set forth in it (see *United Communist Party of Turkey and Others*, cited above, § 60).

78. Against that background, the Court considers that the reasons invoked by the authorities to dissolve the Association were not relevant and sufficient. The restrictions applied in the present case, accordingly, did not pursue a “pressing social need”. Being so, the interference cannot be deemed necessary in a democratic society. It follows that the measure infringed Article 11 of the Convention.