

OUTSTANDING ISSUES AFFECTING THE MUSLIM TURKISH MINORITY OF WESTERN THRACE

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*(A presentation by the Minority and Human Rights Branch of the Western
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DENIAL OF IDENTITY AND DEGRADING TREATMENT

Greece insists on the policy of denial of the Turkish identity of the minority. Turkish associations are banned and courts continue to refuse registering new Turkish associations.

In 1999 Foreign Minister Papandreu declared that Greece would finally apply the internationally accepted norms regarding national minorities and recognize the right to self-identification. However this statement caused widespread reaction within political circles and press against the Minister, as well as against Turkish minority and the NGOs which dared to defend the cause. Consequently, although signed by Greece in 1997, the ratification of the Framework Convention for the Protection of National Minorities has not taken place.

In recent years, punitive actions targeting the minority appear to have ceased. Lately, there has been no report of systematic harassment, and unlawful persecution by the authorities against the members of the Turkish community. Yet, incidences of prejudice, hate-speech and degrading attitude still continue mainly through conservative press. Occasionally, some dignitaries and ultra-nationalist/religious societies join hands with the media.

FREEDOM OF ASSOCIATION

Greece continues to object the establishment of civil societies and associations which carry the denomination "Turkish" on their title; i.a. The Cultural Association of Turkish Women of Rodopi. The case was appealed at the First Instance Court of Thrace, which refused the appeal on 17 January 2003 by its decision, No: 23/2003. Subsequently, the

case was brought before the Cassation Court, which initially scheduled its hearing for 6 February 2004, but later on rescheduled for 28 January 2005. The case was discussed at the Greek Supreme Court and the rapporteur judge declared for banning of the establishment of the Cultural Association of Turkish Women of Rodopi. The Greek Supreme Court officially declared its decision on 1st of April 2005. By this way, the Greek Supreme Court rejected to register this cultural association in the Associations List of the Rodopi Prefecture in 2001. In the court verdict, it was declared that members of this association who are Greek citizens and identify themselves as Turks aim to promote the Turkish ideals within the national boundaries of Greece and such an identification as “Turkish” can cause misunderstanding about the citizenship and the identity of minority women.

There were other cases of restricting and delaying freedom of association, such as the Association of the Clergies of Western Thrace Mosques. This association was formed in 1995 and until 2005 the court under the pretext continuously rejected its application that “the term ‘Western’ would render disputable the Greekness of Thrace and its recognition would undermine the duties of the government-appointed Muftis.” In the end of nine years struggle, the application of establishment of this association was accepted by the Court of Appeals of Thrace. Also, Minority Educational and Cultural Association of Alantepe whose application of establishment had continuously been rejected by the Court of Appeals was finally accepted on 25th of February 2005.

Western Thrace Turkish Teachers Union, Komotini Turkish Youth Union and Xanthi Turkish Union, all three having been legitimate civil associations since early 20th century remain banned as of May 2005. Following repeated postponements, the hearing of the case of the Xanthi Turkish Union took place on 19 September 2003 as scheduled. The Court in its decision dated 5 December 2003 referred the case to a full-session of its General Assembly on 23 September 2004. The case of the Xanthi Turkish Union was discussed at the General Assembly of the Greek Supreme Court and the rapporteurs of the Court gave their final opinions to the Supreme Court. The Court unanimously decided for the dissolution of the Union at its close session on 13 January 2005 and the decision was made public on 7 February 2005. This decision was the end of the twenty years exhaustion of the local remedies. Rejecting this decision, the elected members of the Minority signed a rejection statement and sent to the all foreign missions in Greece. As the next step, the executive committee of the Union have recently applied to the European Court of Human Rights.

MINORITY EDUCATION:

Article 40 of the Treaty of Lausanne states that: ...Members of the Minority shall have equal rights to establish, manage and control, at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein...

By Article 37 of the Treaty of Lausanne, Turkey and Greece have undertaken that the provisions contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

As of May 2005 the number of minority schools in Western Thrace declined to 226 (Actually there are 230 schools, but 4 or 5 of them no longer have students). As per bilateral agreements between Greece and Turkey these schools implement Turkish curriculum as mother tongue, and Greek curriculum as the official language.

Minority education has been subjected to constant interference by the Greek Governments. As a result, autonomous nature of the education underwent radical changes and the quality of education has substantially been eroded. Currently, minority schools are governed through a series of complex restrictive laws which are consistent neither with Greece's national educational targets, nor with the delicate balance between Turkish curriculum and Greek language instruction.

In its present form, Turkish minority's education system cannot possibly serve fundamental educational needs. Nor can it help build mutual respect and confidence between the citizen and the State. In some experts' opinion, minority education has been intentionally downgraded in order to create a feeling of despair and oblige the parents to send their children to public schools, which would accelerate and deepen assimilation. Whatever the reasons are, under present circumstances minority youth is doomed to failure. This state of affairs, on the other hand, not only undermines Greece's national education standards but also damages the social tissue of the society simply because present minority schools mainly produce secondary class citizens.

Government's efforts to unilaterally upgrade the Greek curriculum of the minority schools with superior technical advisory services backed by resources from the EU so far have not produced the desired results. The "Muslim Children's Education Project" had limited impact and faced resistance from the community since Athens does not seem to be interested in the idea of maintaining transparency and dialogue with the community and resuming cooperation with Turkey to improve minority education.

One significant step forward has been Government's initiative to authorize the holding of elections for minority School Boards (Encümen/Sholiki Eforia) at the end of 2002. This is an exclusive institution that allows the minority a certain amount of discretion and control over the management of its own schools. Despite the fact that the regulations regarding this institution have been objectionably altered, minority perceives the holding of the elections as a sign of goodwill.

Turkish Minority does not refuse the betterment of the Greek curriculum in its schools. But, they insist that the entire curriculum, both Turkish and Greek needs to be upgraded to attain higher European standards. This would only be possible through effective dialogue and cooperation between Greece and Turkey and minority NGO's, as has been

in the earlier years. Minority dignitaries generally complain that their repeated calls fall on deaf ears.

In order to draw the attention of the national authorities and the international community to the deepening problems of Turkish minority education in Western Thrace, minority experts prepared a summary report titled “MINORITY EDUCATION IN THRACE, A NEW PERSPECTIVE IN THE SEARCH FOR SOLUTIONS IN 2002”. The Government, so far remained indifferent to this appeal.

Construction by the Government of a new annex building to one of the two minority high schools (Celal Bayar High School in Komotini) which lacked space for additional students has been a welcome initiative, especially because the subject school has a symbolic and historic value of better times and relations.

Towards the end of 2003 two decrees have been passed by the parliament to provide government funds to minority schools and include minority children living in mountainous areas in a school transportation assistance scheme. Regional authorities also started distributing computers and other educational equipment to minority schools. Minister of Public Works in a recent visit to Thrace announced that up to 50 prefabricated buildings would be reserved for minority schools which need additional space and funds would be allocated for structural repairs and improvements. Although such improvements would normally receive positive reactions from the minority, in an atmosphere lacking transparency and dialogue, government’s over willingness to finance minority schools, particularly at a time when they refuse to return the administration of the charitable foundations (Waqfs) to the people, create hesitation and suspicions about ulterior motives.

It may, however, be worth mentioning that; minority’s main NGO, “The Association of University Graduates” and the banned “Western Thrace Turkish Teacher’s Union” attempted to initiate a dialogue with the managers of the “Muslim Children’s Education Project” who are Professors from Athens University. Unfortunately there was no solution. Also towards the end of 2003 six actual and former MPs representing different political parties called on the Education Minister inviting him to pay attention to their problems and demands. They also visited the leadership of the main opposition party and briefed them about minority’s position. It has been reported in the press that following this encounter, the Prime Minister convened a restricted cabinet session focusing on minority’s problems. Some statements were made about eventual formation of bi-lingual pre-schools and “Turkish” being added in the curriculum of public schools in Thrace. But, these remarks remained rhetorical since the country rapidly shifted into pre-election mood before any action was taken.

FREEDOM OF CONSCIENCE & RELIGION:

It is encouraging that sporadic acts of vandalism and desecration targeting mosques and Muslim cemeteries has become rare in recent years. The situation can be considered promising in terms of individual religious rights. Though with occasional delays and

impediments, minority community is generally granted the necessary permits to build and repair their mosques. Lately, there have been no reports of interference in individual worshipping practices.

Yet, there has also not been any progress towards the settlement of the outstanding institutional problem of Muslim religious leaders, the Muftis. The European Court of Human Rights concluded on two instances, i.a. Serif versus Greece (14 December 1999-Case No: 38178/97) & Aga versus Greece (17 October 2003-Case No: 50776/99 & 52912/99), that Greece has violated Article 9 of the ECHR. Given the finding that there has been a violation of Article 9, the Court chose not to review the claims of violation of Article 10. Meanwhile Cassation Court declined an appeal by Ibrahim Serif, the elected Mufti of Komotini to the Government to hold elections for the Office of the Mufti.

State continues to disregard minority's elected Muftis and works through a number of appointed officers who lack credibility and respect even among their own people. The authority of the individuals appointed by the State to the Offices of Mufti in Komotini, Xanthi and Didimotiho is disputable since they are not recognized, nor respected by the minority population.

Despite ECHR decisions and Cassation Court's ruling that the messages he issued to his believers would not constitute breach of authority, thus were not punishable, until recently Mehmet Emin Aga, the elected Mufti of Xanthi, has been subjected to prosecution. Towards the end of 2003 all outstanding cases against him, except the ones before the European Human Rights Court, have been dropped. Between 1990 and 2003, Mehmet Emin Aga have been subjected to more than 20 persecutive trials and sentenced with more than 129 months of imprisonment, which, after appeals has been brought down to 63 months of imprisonment. As stated above, with few exceptional cases under review in Strasbourg, the elected Mufti of Xanthi presently faces no new legal cases. So far, no material and moral indemnities have been offered to Mufti Aga for the physical damage and psychological pressure incurred on him. The minority, on its part, expects the government to cease interfering in the field of divine conscience and finally recognize minority's right to elect its own religious leaders.

MUSLIM CHARITABLE FOUNDATIONS:

Muslim Charitable Foundations (Waqfs) constitute an essential part of Minority's cultural, historic and religious heritage. The people who currently hold positions in the governing councils of the Muslim Foundations have been appointed by the Military Junta in the 60s and the case of their appointed governing boards is among the few one of the controversial acts of the military dictatorship in Greece, which remained in place even after Greece's return to democracy.

Disregarding their financial immunity, State continues to impose excessive taxes and legal sanctions on the properties owned by the Muslim Charitable Foundations. Minority's inability to govern and have access to the accounts of these Waqfs also

prevents them from dispensing the revenues obtained thereof towards society's vital needs, such as the maintenance and improvement of schools.

Despite repeated appeals of the minority leadership and public declarations by high ranking Government Officials (Regional Secretary General, Interior Minister and Foreign Minister) that new legislation would be adopted in line with minority's customs and expectations and free elections would be allowed for new Waqf Boards.

When Şevket Hamdi, the chairman of the wakf committee of Xanthi who had been appointed by the Military Junta regime in 1967 and who practiced his duties for 28 years unabatedly died, the Secretary General of the Eastern Macedonia and Thrace Region Mihalis Aggelopolous appointed a new committee on the administration of Xanthi Wakfs based on the Law no. 1091/1980 on 10 January 2005. This practice was a clear violation of minority rights. The appointed members of the Wakf boards have never been accepted by the Muslim Turkish Minority of Western Thrace.

EXPELLED CITIZENS AND STATELESS PERSONS:

Article 19 of the Greek Citizenship Law (No: 3370 of 1955) was an obvious case of racial discrimination and a flagrant violation of the fundamental right to citizenship. It was in breach of the Greek constitution and international law. It provided that: "A citizen of non-Greek origin leaving Greece without the intention of returning may be declared having lost Greek citizenship." The same would also apply to a person of non-Greek ethnic origin born from Greek mother and father and domiciled abroad. His minor children living abroad may also be declared having lost Greek citizenship if both parents or the surviving parent have lost it as well.

On 23 January 1998, Article 19 of the Greek Citizenship was repealed by the Greek Parliament. This act was welcomed both by the international community, as well as within the ranks of the Turkish minority. However, the then Greek Minister of Interior Alekos Papadopoulos disclosed however abolishment would not have retroactive effect. On 20 April 2005, the only MP of the Turkish minority in today's Greek Parliament, İlhan Ahmet, demanded for an information about the exact number of the expelled citizens under Article 19 of the Greek Constitution from the Ministry of Interior. In the answer of the Ministry (No. 78400/8334), the number of Muslim Turks deprived from the Greek citizenship until 1998 was stated as 46.638.

In its answer, the Ministry of Interior stated the following:

-The number of those lost their Greek citizenship was from Western Thrace and Dodecanese Islands.

-Among the expelled Greek citizens those who gained Turkish citizenship and then returned back to Greece have the right to live in Greece as 'stateless' people. The exact number of the stateless people living in Greece will be stated by the Ministry of Public Affairs in the future.

-These people can apply with all necessary documents to the Ministry of Interior in order to gain their citizenship back. These applications will be considered by the Committee of Citizenship and the final decision will be given by Deputy of Ministry of Interior. The expelled citizens criticize the high costs of the application forms.

- The applicants whose applications are rejected by the Committee have the right to apply for naturalization “politografisi” based on the articles 5,6,7,8 and 9 of the new Citizenship Law (No.3284/2004).

Majority of the Government’s acts of expulsion from citizenship have been put into effect against the citizens’ in-absentia in the form of administrative decisions in violation of the Greek Constitution, as well as numerous international instruments to which Greece is a signatory.

Article 4 of the Constitution:

i. All Greeks are equal before the law.

ii...

iii. Withdrawal of Greek citizenship shall be permitted only in case of voluntary acquisition of another citizenship or of undertaking service contrary to national interests in a foreign country, under the conditions and proceedings more specifically provided by law...

Article 20 of the Constitution:

i. Every person shall be entitled to receive legal protection by the courts, and may plead before them his views concerning his rights or interests, as specified by law.

ii. The right of a person to a prior hearing also applies in any administrative action or measure adopted at the expense of his rights or interests.

Article 25 of the Constitution:

i. The rights of men as an individual and as a member of the society and the principle of the constitutional welfare state are guaranteed by the state. All agents of the state shall be obliged to ensure the unhindered and effective exercise thereof...

The experience shows however, since the abolishment of Article 19, little has been done to remedy the situation. With few exceptions, expelled citizens have not regained their Greek nationality. Currently, there are several thousands of stateless persons living abroad.

It is inconceivable how those citizens of Greece who never left the country could have been stripped-off their citizenship under Article 19(...having left the country without intention to return...) There are apparently several hundred victims in this category living in Greece. Despite repeated promises by the Government, till now, only a part of those stateless people have been accorded citizenship and this was made through the process of naturalization, as if they were ordinary third country nationals.

Thousands of people are unaware of or denied access to the documentation and pseudo “evidence” used by the Government (Ministry of the Interior through decisions of the Citizenship Council) to strip them off their citizenship. This is done under the pretext of “confidentiality” of sensitive documentation. It was said that even the Greek Ombudsman might have been denied access to such documentation by the Ministry of the Interior, on the grounds that disclosure of such information would undermine national interests and spoil the reputation of Greece. National courts delay judgments and/or reject cases on grounds that the applications were late in filing their case, or could not produce relevant evidence/documentation.

So far, no steps have been taken in order to reinstate thousands of unlawfully expelled citizens and their children who continue living abroad, some of them, understandably, under very difficult conditions...

On 21 September 1999, The Greek Delegation to the OSCE Implementation Review Conference in Vienna using its right to reply following the presentation of GHM and MRG-Greece reports stated the following:

...The question is posed, what to do with the people who have lost their citizenship. The position of the Greek Government on this is clear: Those wishing to acquire Greek citizenship may apply for it following the legal procedure provided for by Greek Law...

It is difficult to comprehend why, until now; no specific procedure has been set to offer a way out to Article 19 victims in order to allow them REGAIN their citizenship. As stated above, the cases of naturalization (politographisi) constitute a totally different practice...

It is essential to note the following:

Members of the Muslim Turkish minority enjoy a special status granted by Lausanne Treaty of Peace and its relevant protocols. They are considered as “etablis”, elements of the Greek population exempted from the exchange of populations that took place between Greece and Turkey at the end of the First World War. They enjoy exclusive minority rights safeguarded by the same Treaty and its instruments. In case naturalization procedure is applied to acquire citizenship, this method de-facto denies them their specific minority rights and privileges.

The expulsion of the members of the Muslim Turkish minority from Greek citizenship resulting in statelessness also constitutes a breach of the international agreements and, more specifically, the EU legislation. Furthermore, as of date of Greece’s accession to the European Union (1981) Greek citizens acquired rights, as “European citizens”, i.a. freedom of movement, employment, property rights etc., within common EU borders, has been violated.

Greece needs to rectify this historic error by offering a blanket solution, abolishing all expulsion decrees enacted under Article 19 of the Citizenship Law (As long as not supported by criminal evidence...if that is the case expulsion should not have been taken

place awarding to Article 19...) by a legislative decision and instituting a practical method for the victims to apply for and regain their citizenship.

It is also expected that Greece grants Article 19 victims and their families the possibility of easy and unhindered visits to their homeland and relatives regardless of whether or not they wish to regain Greek nationality.

POLITICAL PARTICIPATION AND REPRESENTATION

Turkish minority represents a proportion slightly over 1% of the population of Greece. Estimates regarding their numbers vary between 120.000 and 150.000. The difference between these figures partly originate from the population groups that live, study or work in third countries, as well as from internal migration. (There is a sizable minority community living in Athens.)

Through introduction of 3 % national threshold in general elections, the minority lost the right to elect its representatives to the Parliament independently or through its own political party. Since then minority candidates have been bounded to enter elections through other political parties' quotas. Due to lack of legal and democratic safeguards, and as a result of the administrative schemes that diluted minority's demographic weight within local boundaries, (such as combined prefectures), the current electoral system fails to guarantee proportionate representation of the minority at the Hellenic National Assembly, as well as in the mixed organs of the local administrations. Through administrative restructuring of the regions, the prefectures and the municipalities under the Kapodistrias Plan, the minority has been effectively banned from electing the Governor in Rodopi which is the only prefecture where it numbers more than half of the population. By the same scheme, the number of the local administrations controlled by the minority has been limited to 4 municipalities, and 7 sub-districts.

EMPLOYMENT IN PUBLIC SERVICE:

In recent years progress has been made in the field of concession of equal rights to business life. However, equal access to public service employment is far from being effective. The lack of minority representatives in public service is generally attributed to linguistic shortcomings. One of the main reasons of this shortcoming is the overall low level of both Turkish and Greek instruction in minority schools. Until recently, desperate families would send their 10-11 year old children abroad so that their children could have access to decent education. It is hard to understand that exclusion prevails even in jobs that require physical condition and service rather than linguistic proficiency. What makes the situation worse is the fact that same regulations are applied to different population groups selectively.

It was encouraging that in the course of 2002 and 2003; nearly one hundred young members of the minority have been offered temporary employment at certain local administration jobs, such as EU-supported Citizen Advisory Bureaus. Also, a symbolic number of them have been offered positions in the Prefectures of Rodopi, Xanthi and the

Office of the Secretary General of Eastern Macedonia and Thrace. The minority hopes and looks for a balanced and consistent approach towards broadening of such measures.

An exclusive sector where the Government has been very keen on recruiting minority civil servants has been the minority education. This, however, creates more problems than benefits because, the government unilaterally, interferes in minority's autonomous education systems and imposes hand-picked, government paid-Turkish teachers and administrative personnel through appointment from amongst the trainees of a state controlled special institution (Special Pedagogical Academy of Thessaloniki). Minority schools are not government property. They obviously are not public schools. Consequently, Government's practice in this field, turns into a source of constant undesirable friction between the minority and the State.

According to Article 40 of the Treaty of Lausanne, ...minority is entitled to establish, manage and control its own schools.. Government's refusal to compromise on this crucial issue continues to create unnecessary friction and undermine the quality of minority education.

FREEDOM OF ASSOCIATION AND MUSLIM TURKISH MINORITY IN WESTERN THRACE

(The Case of Turkish Union of Xanthi & Others)

September 2005

A living example of Greek Government's denial of the ethnic identity of the Turkish minority is the banning of the civic organizations. The Western Thrace Turkish Teachers Union (founded in 1936), Komotini Turkish Youth Association (founded in 1928) and Turkish Union of Xanthi (founded in 1927) have been victims of this campaign.

For decades, these Associations operated as legitimate civic society organizations promoting cultural, educational and sportive activities until 1983 when the state policy went through a major transformation and challenged their existence.

In 1984, the local Prefectures in Komotini and Xanthi applied to domestic courts demanding the banning of these Associations under the pretext that their names contained the term "Turkish". Subsequently, Greek Courts ordered the dissolution of the "Western Thrace Turkish Teachers Union", "Komotini Turkish Youth Union" and the "Turkish Union of Xanthi" on the grounds that their members declared to be of "Turkish origin" and the titles of the Associations contained the word "Turkish".

In doing so, the courts disregarded the facts that the titles of the Associations merely symbolized the Greek citizens of "Turkish descent" living in Western Thrace, they have been established in accordance with Greek national laws, they have been recognized by the courts and authorities and they were functioning without problems and restrictions for a long time as legitimate peaceful Associations.

In November 1987, the Greek High Court affirmed 1986 decisions of the Court of Appeals of Thrace to ban the “Western Thrace Turkish Teachers Union” and “Komotini Turkish Youth Union”. The Court held the view that the word “Turkish” referred to the “citizens of Turkey” and could not be attributed in any way to the citizens of Greece. The Court further ruled that “the use of the word ‘Turkish’ to signify ‘Greek Muslims’ undermined public order.”

Minority strongly protested against Court’s decision and defended its Turkishness by staging mass demonstrations on 29 January 1988. Large numbers of people representing all segments of the minority from all over Western Thrace marched towards downtown Komotini until they were brutally suppressed by security forces. Two years later, in an unprecedented outburst of racial hatred, during the anniversary of the “January 29 events”, organized mobs stormed Turkish quarters of Komotini, damaging and looting around 400 Turkish shops and businesses. During those events several members of the minority, including community leaders and religious clergy, were badly beaten up and humiliated. In June 2000, one criminal court concluded to “neglect by security authorities in fulfilling their duty of safeguarding fundamental rights of the citizens to life and property”

On 25 and 26 April 1991, the Prefecture of Rodopi sent further notifications to the “Turkish Youth Union of Komotini” and “Western Thrace Teachers Union” regarding the ban. Subsequently, both associations’ titles were forcibly removed by the police.

The case of Xanthi Turkish Union has finally been concluded before Greek Justice. A brief summary of the XTU’s history is in Annex. In 2000, Court of Appeals’ verdict to ban the association was overruled by the Cassation Court. However, lower court ignored High Court’s decision and renewed its verdict to ban the Union. On 5 December 2003, the Board of Judges at the Cassation Court was split by 3 judges in favor and 2 judges against the appeal. Consequently, the case was referred to a “full-session hearing and scheduled for 23 September 2004. The case of the Xanthi Turkish Union was discussed at the General Assembly of the Greek Supreme Court and the rapporteurs of the Court gave their final opinions to the Supreme Court. The Court unanimously decided for the dissolution of the Union at its close session on 13 January 2005 and the decision was made public on 7 February 2005. This decision was the end of the twenty years exhaustion of the local remedies. Rejecting this decision, the elected members of the Minority signed a rejection statement and sent to the all foreign missions in Greece. As the next step, the executive committee of the Union has applied to the European Court of Human Rights.

In recent years, restrictions targeting minority’s freedom of association has been further exacerbated by civil courts’ refusal to recognize and register few newly formed minority associations. The application of the “Association of Clergies of Western Thrace Mosques” established in 1995 has been refused on the grounds that; “the denomination ‘Western’ in its title would render Greece’s national borders disputable” and “if recognized the association may undermine the authority of the Government-appointed

Muftis.” On 21 November 2003, Cassation Court postponed its decision on the appeal to a later date. In the end of ten years struggle, in March 2005, the Court of Appeals of Thrace announced its decision for the establishment of this association.

Similarly, the application by the “Rodopi Turkish Women’s Cultural Association” in 2001 was declined by the Local Court. In this case, also, founders’ appeal was pended before the Cassation Court. On February 6th 2004, the Court postponed its decision and rescheduled the hearing for 28 January 2005. The case was discussed at the Greek Supreme Court and the rapporteur judge declared for banning of the establishment of the Cultural Association of Turkish Women of Rodopi. The Greek Supreme Court officially declared its decision on 1st of April 2005. By this way, the Greek Supreme Court rejected to register this cultural association in the Associations List of the Rodopi Prefecture in 2001. In the court verdict it was declared that members of this association who were Greek citizens and identifying themselves as Turks aimed to promote the Turkish ideals within the national boundaries of Greece and such an identification as “Turkish” could cause misunderstanding about the citizenship and the identity of minority women.

Greece is signatory to the majority of UN, Council of Europe, EU and OSCE conventions and declarations regarding human and minority rights. She has also signed, in 1997, but not yet ratified, the European Framework Convention on Protection of Minorities. In other words, Greece belongs to the group of nations that endorse higher standards in the field of human and minority rights. However, Greece’s current practice at home is far from being perfect. This attitude causes unnecessary tension and lack of trust between the citizen and the State.

As of September 2005, the word “Turkish” is still “sacrosanct”, and Turkish minority’s freedom of association remains as an unresolved issue in Greece.

ANNEX

XANTHI TURKISH UNION (May 2005)

The case of the Turkish Union of Xanthi originally established as the “Home of Turkish Youth of Xanthi” on 14 April 1927 (renamed as “Xanthi Turkish Union” in 1936) initially followed a similar pattern. Following a 1984 appeal by the Prefecture of Xanthi, the First Instance Court of Xanthi banned the Union in 1986 on the grounds that ‘the word “Turkish” contained in its title constituted a threat to national security and the Charter of the Association violated the law, as well as public morale and order.’

The decision of the First Instance Court was appealed by the members of the Union and the court hearing was scheduled for 20 March 1998. The Court of Appeals based on a request by the Xanthi Prefecture postponed the session until 6 November 1998. On that

day, Prefecture of Xanthi requested another postponement and the hearing was adjourned until 4 December 1998. In December 1998, further adjournment was ordered until 15 January 1999 on grounds of a strike by court clerks.

The appeal was finally heard on 15 January 1999 by the Three-Member Court of Appeals of Thrace. In its decision published on 19 March 1999 the Court dismissed the appeal, and endorsed earlier Court decision to ban the Xanthi Turkish Union. In other words, the Association's existence was undermining public order, simply because its title contained the word "Turkish" which was serving the interests of a foreign state within the borders of Greece. (This ruling was based on the pretext that XTU's Charter contained a provision which recited Ataturk's motto of upgrading the lifestyle of the Turkish nation to the level of contemporary western civilization"). In its decision No: 117/1999, the Court of Appeals concluded that 'the reference made to the "Turks of Western Thrace" in the title and the charter of the Association created the impression, as if there was an association belonging to the Turks of Turkey in Greece and that the association was established not by Greek citizens but by foreigners...'

The members of the Turkish Union of Xanthi appealed the court's above decision at the Court of Cassation. The hearing for the appeal was held on 3 March 2000. In its decision No: 1530/2000 dated 8 December 2000, the Court of Cassation considered the decision of the Court of Appeals "without sufficient ground and evidence" and returned the case to the previous Court for a more thorough review. The hearing of the Court of Appeals was scheduled for 12 October 2001. It was subsequently postponed and held on 23 November 2001. By its decision No: 31, dated 25 January 2002, the Court of Appeals reiterated its verdict for the dissolution of the Turkish Union of Xanthi.

The members of the Xanthi Turkish Union once again brought the decision of the Court of Appeals to the Cassation Court. The hearing was scheduled for 10 January 2003. However on that date, the session was postponed again until 19 September 2003. On September 19, the Court reviewed the appeal and on 5 December 2003 it decided to refer the case to a full session of its General Assembly. The hearing was scheduled for 23 September 2004. The case of the Xanthi Turkish Union was discussed at the General Assembly of the Greek Supreme Court and the rapporteurs of the Court gave their final opinions to the Supreme Court. The Court unanimously decided for the dissolution of the Union at its close session on 13 January 2005 and the decision was made public on 7 February 2005. This decision was the end of the twenty years exhaustion of the local remedies. Rejecting this decision, the elected members of the Minority signed a rejection statement and sent to the all foreign missions in Greece. As the next step, the executive committee of the Union has recently applied to the European Court of Human Rights.

State's obstinate denial of Turkish minority's ethnic identity undermines social peace and the hopes for genuine reconciliation. Members of the minority rank the denial of their ethnic identity as one of the most important stumbling blocks undermining their right of improving themselves within Greek society and developing strong and solid ties of trust with their state.

RELIGIOUS INTOLERANCE

VIOLATION OF FREEDOM OF CONSCIENCE AND EXPRESSION IN GREECE THE CASE OF MEHMET EMIN AGA, ELECTED MUFTI OF XANTHI

(MAY 2005) (REVISED)

Over the years the Government of Greece has repeatedly prosecuted the elected Muftis of the Muslim Turkish Minority in Western Thrace under the pretext of “usurping the authorities of a religious Minister”. Mehmet Emin Aga, the elected mufti of Xanthi, and Ibrahim Serif, the elected mufti of Komotini, faced prosecution despite decisions of the European Court of Human Rights and subsequent ruling of the Greek Supreme Court which under normal circumstances should serve as “case-law” in Greek courts. During the last decade Mufti Aga has been forced to shuttle between courts in different, sometimes remote, parts of Greece at great cost in terms of material damage, moral pressure and serious physical condition that resulted due to his ailing health.. Throughout his prolonged struggle, on numerous occasions Mufti Aga has been physically attacked, beaten, wounded, and imprisoned. The last of the physical attack was perpetrated on a holy Friday after early morning prayers inside Mufti’s own house on 25 April 2003. Between 1993 and 2003 Mehmet Emin Aga faced around 20 separate court cases, filed by the state because of 49 messages he had issued to the minority community. Cumulatively the Mufti has been convicted to 129 months of imprisonment, which was reduced to 63 months of imprisonment after the appeals. Mufti Aga spent nearly six months in jail and released following severe health problems. He has converted some of the verdicts to bail and since the decision of the European Court, the trials staged against the Mufti of Xanthi gradually ended with acquittal. Despite ECHR decisions however, so far the Government neither compensated, nor recognized the authority of Mehmet Emin Aga...

... The European Court of Human Rights’ ruling on 14 December 1999 on “Serif v. Greece” case (38178/97) i.a. stated that;

“...the Court did not consider that, in democratic societies, the State needed to take measures to ensure that religious communities remained or were brought under a unified leadership. The Court recognized that it was possible that tension was created in situations where a religious or any other community became divided. However, it considered that this was one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances was not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerated each other...”

On 29 April 2002, English version of the daily Kathimerini newspaper published the following news article:

“The Supreme Court last week overturned a prison sentence given to a member of the Muslim minority who has repeatedly claimed he is a Mufti, or religious leader, it was reported on Saturday.

Mehmet Emin Aga, who has been convicted several times in recent years on similar charges, is the son of the previous Mufti of Xanthi, northern Greece, where there is a large Muslim minority. He was elected to the position but was not appointed by the government. The Council of State is soon to rule as to whether the system introduced in 1990 of Government appointments for Muslim religious leaders is compatible with the protection of religious freedoms.

The Court found that in issuing a religious message and signing as Mufti, for which a Larissa Court sentenced him to four months' imprisonment, Emin Aga had not committed a crime as he had not tried to exercise the administrative or judicial rights of a Mufti's office."

RECENT CASES AT ECHR

Two of the convictions of the Greek courts against Aga, have been brought before the European Court of Human Rights, i.a. applications no: 50776/99 and 52912/99. The Court found the cases admissible and offered the parties the option of "Friendly Settlement". Whereas Mufti Aga agreed, in principle, to a friendly settlement with the Government of Greece on the condition of Government agreeing to abide by its Treaty obligations and paying Mufti Aga "1 Euro" as symbolic "moral indemnity" against all the damages, Greece declined the offer and moved instead to repeal both subject convictions prior to ECHR's judgement, setting forth the pretense that since Aga has already been acquitted on both cases, "friendly settlement" would not be necessary. Subsequently, the European Court of Human Rights once again concluded that Greece has violated Article 9 of the Convention. The verdict dated 17 October 2002 reads as follows.

....The Court further recalls that the applicant was convicted for having usurped the functions of a minister of a "known religion". The facts underlying the applicant's conviction, as they transpire from the relevant domestic court decisions, were issuing messages of a religious content in the capacity of the Mufti of Xanthi. In these circumstances, the Court considers that the applicant's conviction amounts to an interference with his right under Article 9 § 1 of the Convention, "in community with others and in public ..., to manifest his religion ... in worship [and] teaching" (see the case *Serif v. Greece*.)

...Despite the parties' disagreement as to whether the interference in issue was "prescribed by law", the Court does not consider it necessary to rule on the question because, in any event, the applicant's conviction is incompatible with Article 9 on other grounds.

...The Court recalls that freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. The pluralism inherent in a democratic society, which has been dearly won over the centuries, depends on it.

...The Court notes in this connection 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. The domestic courts convicted the applicant on the mere ground

that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Xanthi. However, in the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society.

...The Court does not consider that, in democratic societies, the State needs to take measures to ensure that religious communities remain or are brought under a unified leadership.

Despite the foregoing development, and in contradiction with Greece's declarations at various international fora in defense of its practice in the field of human rights and religious freedoms, till the end of 2003 Greek courts continued prosecuting and convicting the elected Mufti of Xanthi, Mehmet Emin Aga for pretence of authority.

Greece's uncompromising attitude on this subject was demonstrated in two convictions by the Criminal Court of Serres. Elected Mufti of Xanthi Mehmet Emin Aga was trialed for two of the messages he issued to the Muslims on 7 June 2000, and 19 September 2000 respectively. On 12 December 2002 the Court sentenced Mufti Aga to 3 months of imprisonment for each case (6 months in total). Aga appealed both verdicts. In December 2003, the local court of appeals acquitted the Mufti, most probably keeping in view the ruling of the European Court of Human Rights and the Supreme Court.

In February 2003, Minority's appeals against Government's acts of appointing Muftis for the prefectures of Xanthi and Komotini were turned down by the Court of Cassation. It is noteworthy that the Cassation Court rejected these cases after delaying the hearings for several years. There are reports that Greek NGOs advice the government to adopt a conciliatory attitude in this field. Unfortunately, current practices indicate the opposite.

In short, at the beginning of the year 2005, in Greece, while the religious autonomy and traditions of the Greek Orthodox, Armenian and Jewish communities is safeguarded, the right of the Muslim Turkish Minority of Western Thrace to have its elected religious leaders recognized and respected by the state is still flagrantly violated.

MUSLIM CHARITABLE FOUNDATIONS (WAQFS) IN GREECE

“PLUNDERING TURKISH HERITAGE”

According to Greek legislation, real and/or legal persons are entitled to establish charitable foundations (waqfs) by means of allocating a certain real estate for a civil cause. Following the identification of the real estate, the purpose of the charity and its governing body, the foundation requires endorsement through a Presidential Decree to become operational. Following this procedure foundations gain legal personality.

It is assumed that foundations serve high civil causes. This very nature of the foundations is of utmost importance, in particular for the preservation and development of the

identity, culture, customs and in the case of Muslim Turkish minority of Western Thrace, religious conscience and practice of the minority community.

The legal status of those foundations belonging to the Muslim Turkish Minority in Greece is defined by Article 11 of the Treaty of Athens of November 14, 1913, concluded between Greece and the Ottoman Empire. According to this Treaty, basic principles regarding the foundations are as follows:

1. The foundations are to be governed by the Muslim population living in Greece;
2. The governance of the foundations is to be overseen by the Muftis;
3. The Muftis are to be brought to office through election by the Muslim population.

Within this context, the Muftis, besides being the religious leaders of their respective communities, are assigned with the responsibilities of representing the minority and advising the community in social matters.

In line with the aforementioned Treaty, the “The Provisional Law No: 2345/1920 Concerning the Muftis and the Election of the Chief Mufti and the Governance of the Foundational Assets Belonging to the Muslim Congregations” was adopted in 1920. This law incorporated the provisions of the Treaty of Athens into Greek national legislation.

Subsequently, these rights have been further safeguarded by Article 40 of the Lausanne Peace Treaty of 1923. In spite of the State’s impeding stance and interventions elections for the foundations’ executive boards were held without major problems throughout 30 years after the adoption of Law No: 2345/1920 and the foundations belonging to the Muslim Turkish Minority of Western Thrace, the members of whom were excluded from the population exchange agreed upon in the Lausanne Convention of January 30, 1923, have functioned in harmony with the State under this Law serving as a the primary source to finance Minority schools and religious institutions, until 1967.

After 1967, Minority’s foundations have become prime targets of the military Junta and have been subject to excessive and direct State intervention. The military government, which usurped the country’s administration as a result of the Coup d’Etat in 1967, hand-picked and appointed people that would fully comply with its orders to operate as “guided subjects” to the executive boards of all state institutions, including legal personalities, through Law No: 65/1967. Although it was not foreseen within the scope of this Law, the military government, also, arbitrarily removed from office the elected executive boards of the Minority’s pious foundations, which had been assigned special legal personalities and have appointed new executive boards from people of its own liking.

This situation has persisted even after the abolishment of the Junta and the return to the democratic way of life in 1974. In other words, the country’s administration being either dictatorship or democratic one did not have any significance as far as the foundations, being the Muslim Turkish Minority’s historical and cultural heritage, were concerned. It could also be further stated that the Minority’s foundations have witnessed the most

detrimental blows from democratic governments. As such, in 1980, the New Democracy Party government, with the support of the main opposition PASOK party, has adopted Law No: 1091/1980, which envisaged the disintegration of the existing Minority foundations into smaller units and thus, their eradication. With the provisions of Article 21 of this Law, it was agreed upon that the relevant clauses of the Greek Civil Code were to apply for the Minority's foundations, which had possessed autonomous structures since their establishment and, historically, have been administered according to Islamic-Ottoman law.

As a result, the provisions of Law No: 2345/1920, concerning the administration of the foundations, which had enabled the foundation's existence within the Greek State under the safeguarding of the Treaties of Athens and Lausanne, were abolished, together with the Minority's sui generis congregational structure. The principle arrangements set forth with Law No: 1091/1980 were as follows:

1. Disintegration of the foundations and setting up separate executive boards for each single one, thus, creating hundreds of small foundations;
2. The nomination of 10 candidates for the five-member executive boards, from which the local Prefect will appoint five according to his will;
3. The payment of salaries as "compensation" to the appointed board members out of the foundations' revenues, by now very modest, following their disintegration and thus, their dwarfed finances;
4. The requisition, by local finance authorities, of detailed information and documentation, regarding all aspects of the foundations (date of commissioning, founding decrees, declared aims, identity of the founders, etc.). (This was done at total disregard of the fact that the foundations have been functioning in harmony with the State since 1920 and that, the State recognized them without any problem although some of their basic documents may have been missing and/or destroyed due to the devastating circumstances caused by repeated wars and occupation in the region throughout the late 19th and early 20th centuries.)
5. The disbanding of the subject foundation through lifting of its property rights and foundation status, as a result of failure to comply with the submission of the above-mentioned information and documentation.

The Minority Supreme Council, the Minority's major consultative body of the time, immediately protested the adoption of Law No: 1091/1980 and, declaring that if implemented, it would result in the eradication of the foundations. Also, the Council decided to prevent the execution of the Law and, in the first instance, has denied the submission of the relevant documents foreseen under Article 20 of the Law. The deadlines to do so have been repeatedly extended. According to the Presidential Decree No: 280/2002 the duties of the appointed officials of Komotini Wakfs were extended until October 16, 2004. Naturally, the State has chosen to implement all of these

procedures in secrecy, through the appointed foundation executive boards, and without the knowledge of the Minority and its leadership. Recently, the Secretary General of the Eastern Macedonia and Thrace Region Mihalis Aggelopolous appointed a new committee on the administration of Xanthi Wakfs based on the Law no. 1091/1980 on 10 January 2005. This practice was a clear violation of minority rights. The appointed members of the Wakf boards have never been accepted by the Muslim Turkish Minority of Western Thrace. The administration's stance vis-à-vis the foundations has consolidated the concern and mistrust which has developed within the Muslim Turkish population on the premises that the State intends to eradicate the Minority's historical and cultural heritage. Such an attitude by the Greek local administration, in turn, results in the further widening of the gulf between the Minority and the State.

The failure of implementing Article 20 of Law No: 1091/1980 has also resulted in the prevention of putting into effect other articles of this Law. This being the case, the administration has adopted the Presidential Decree No: 18 and dated December 28, 1981, empowering the local Prefects in the implementation of Article 20. This move has precipitated the inequality between the majority and minority citizens in Western Thrace.

In the Greek texts of both the Treaty of Athens of 1913 and the Lausanne Peace Treaty of 1923, the Ottoman Turkish term at the time of signing for "foundation" (waqf) was used instead of the Greek word meaning "foundation" (perousia). This point had confirmed that the Minority foundations' status during the Ottoman period was to continue and that they were to function according to Islamic law under the Greek State. This had meant that the foundation properties could not be sold, mortgaged, confiscated, acquired by means of delivery of possession, requisitioned by the State. Foundation properties are sacred, resulting from the understanding that under Islamic-Ottoman law, foundation properties were accepted to be as the "property of God".

The present situation, however, shows that, especially those foundation executive board members in Xanthi and Didimoticho have sustained personal profit from foundation revenues under the name of "compensation" for their services, have sold many foundation properties and/or exchanged them with less valuable real estate, and that many foundation properties are under the occupation of the State and/or local administrations. The gravest example to this is demolition of the historic "Tabakhane" Mosque in Xanthi, on the premises that it was obstructing the view of a hotel. Although the elected Mufti of Xanthi had applied to the court for the annulment of the appointed executive board's rights over the foundation, the court had denied the application stating that the Muftis did not have such a right under Law No: 1091/1980.

Another point worth mentioning is the Komotini city plan, which was designed in the 1930's and has been remodeled numerous times afterwards, which enables the demolition of many mosques, fountains and foundation properties built according to traditional architecture. For example, in the neighborhood known as "Kır Mahalle", three mosques on the same street will be demolished in case the present city plan is implemented with the construction line being pulled south without any apparent reason. Bearing in mind that these mosques were built during the Ottoman period and that the

city plan was devised in the early 20th century, it could be easily deduced that the Greek administrators do not possess good faith vis-à-vis the Minority foundations.

The Turks living in the Balkan Peninsula countries under minority statuses and enduring repressive measures have been able to preserve their national consciousness through their adherence to their language and traditions, as the bases of their education and national cultures and, most importantly, through their Muslim faith. Consequently, other minorities in Greece, who belong to the Christian faith (such as Wallachs, Christian Albanians and Macedonians), have either disappeared from existence or been subject to assimilation to a great extent.

Greek administrations in the past have intervened in all Minority institutions, in order to break the unity of the Turks of Western Thrace and their eventual assimilation. Associations have been closed because their names contained the word “Turk”, a symbol of the Minority’s national consciousness. Against international agreements, in order to impose the arbitrarily State-appointed Muftis on the Minority, the Muftis elected by the Muslim population have been subjected to unfair lawsuits and punished. Most importantly, the administration of the foundations, the Minority’s sole institution able to generate income for use in the fields of education, social coherence and religion, are taken from the hands of the Minority, in order to eradicate them by way of either disintegrating them or requisitioning their properties.

On the other hand, various problems have been encountered regarding the foundations’ administrations. The foundations have been distanced from their rightful owner, the Minority, and have turned into mere “vacant” properties. Since the appointed executive boards are not recognized by the Minority, many of the foundations’ revenues have not been collected. Lawsuits filed by the appointed executive boards have also not found any haven. These executive boards, in pursuit of personal profits, have intentionally neglected the restoration and renovation of foundation properties, causing this heritage, in time, to wear off physically, to collapse and/or to devalue.

This disorder, from time to time, has even disturbed the appointed executive board members themselves, leading some to resignation. In face of this, the Greek administration, even as to violate the laws it adopted, has empowered the appointed Muftis with the right to oversee the foundations’ administrations, in accordance with paragraph 1 of Article 10 and paragraph 3 of Article 14 of the annulled Law No: 2345/1920.

Parallel to all these, with the Decree titled “Muslim Clergymen” dated December 24, 1990, which was approved by Law No: 1091/1980, the provisions of Law No: 2345/1920 regarding the election of the Muftis by the Muslim population and the Muftis’ right of overseeing the foundations’ administration were also annulled. This arrangement has resulted in abolishment of the Minority’s say over the governance of its educational and religious affairs.

The foundations' situation regarding taxation is also chaotic. Charitable foundations in Greece, while being subject to inheritance, real estate and income taxes in the past, in reciprocity with the Greek foundations in Istanbul, have stopped paying such taxes starting from the 1970's. The State, on the other hand, continues to accrue taxes on the foundations and since these are not paid the debt, late due and interest accumulates. Finance authorities are adopting mortgage decisions for the compensation of the foundations' tax debts. But, since these decisions cannot be implemented, in order to prevent them from becoming barred, mortgage decisions are renewed every 10 years. Presently, it is assumed that the foundations' overall tax debts, interests and penalties have exceeded their own actual value. Should this condition persist, the foundations may even face the danger of losing their properties in the future.

As of today, the condition of the foundations in Western Thrace under the responsibility of the appointed executive boards in Xanthi, Komotini and Alexandroupoli is unknown. It is impossible to ascertain which of those properties belonging to these foundations have been confiscated, sold and/or eradicated, in the past 30 years. This is also the case regarding the foundations' incomes and expenses, and the amount, kind and destination of expenditures made. Both the appointed executive boards and the so-called Muftis are being leverage to the demise of the Muslim Turkish foundations, the historical and cultural heritage of the Minority, by acting in secrecy and accordance with the directives of the State, the official faith of which is Greek Orthodoxy, and totally distanced from the congregation. Worst of all, no one can inspect and/or demand explanation on these bodies' actions concerning the foundations. While criterias concerning minority rights and foundations are prerequisites for candidate countries for the EU membership, the indifferent stance of Brussels and other EU capitals to the situation in Greece, a member country for 24 years is exemplary.