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Mr. Samuel Žbogar  
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**By Fax & Mail**

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Dear Mr. Žbogar,

With this letter, I would like to address the Committee of Ministers on behalf of the applicants in the case of *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (application no. 74651/01). In this case, the European Court of Human Rights ("the Court") in its judgment of 15 January 2009 found a violation of Article 11 of the European Convention on Human Rights. The applicants, however, are facing considerable difficulties in having the judgment of the Court executed and they wish to draw the attention of the Committee of Ministers to the matter.

The case originated in a complaint filed on behalf of Association of Citizens Radko and its members, following a judgment the Macedonian Constitutional Court. The Macedonian Constitutional Court has declared the Association's Articles and Programme to be null and void as contrary to the Macedonian Constitution. 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 (Болгари) from Macedonia and its recognition (i.e. that of Macedonian ethnicity) was the biggest crime of the Bolshevik headquarters committed during its existence". That court further noted that the founders of the Association, as Ivan Mihajlov's "ideological companions", 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". Following that judgment, the Ohrid Basic Court, where the Association of Citizens Radko was initially registered, ruled to terminate the Association on the basis of the judgment of the Constitutional Court.

In its judgment, the European Court of Human Rights held that the judgment of the Macedonian Constitutional Court did violate the applicants' right to freedom of association. In its judgment the Court outlined the following reasons.

"[The Macedonian] 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. ...

In addressing the key reasons of the Macedonian Constitutional Court for declaring the Programme of the Association of Citizens Radko to be contrary to the Constitution, the European Court of Human Rights further stated the following.

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. ... 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".

The applicants have been informed by the Court in April 2006, that the judgment had become effective. Following this, the applicants took steps to have the Association of Citizens Radko re-registered. The European Court of Human Rights has reviewed the organization's programme and articles and found the dissolution of the organization not to be justified. In view of those facts, the applicants believe that a direct consequence of the judgment of the ECtHR is that the Association of Citizens Radko should be recovered. As there is no clear procedure under national law to re-register the Association, the head of the Association, Mr. Paunkovski, addressed the Macedonian Government with a letter, requesting instructions as to how he should proceed. Mr. Paunkovski submitted also motions with the Macedonian Constitutional Court,<sup>1</sup> requesting the Constitutional Court to re-open the proceedings in the case of Association of Citizens Radko, and with the Ohrid Basic Court, requesting that Association Radko is re-registered.

In a letter of 28 May 2009, the Ministry of Justice of the Republic of Macedonia informed the applicant, that in its view, the Republic of Macedonia is under no obligation to re-register the Association of Citizens Radko, as the ECtHR did not hold explicitly in its judgment, that the Association should be re-registered.<sup>2</sup> With a letter of 27 May 2009, the Ohrid Basic Court informed Mr. Paunkovski that the courts were no longer competent with respect to registering organizations, but instead the Central Registry of the Republic of Macedonia was, and that Mr. Paunkovski should address the Central Registry. The Constitutional Court never responded to the applicant's request.

Following this, the applicant filed a fresh application for the registration of the Association of Citizens Radko with the Central Registry of the Republic of Macedonia. On 21 July 2009, the Central Registry gave instructions to the applicants to amend the Articles and Programme of the Association. Following a refusal by the applicants to amend the Articles and Programme of the Association, on 31 July 2009, the Central Registry declined to register the Association. The reasons for that refusal were very much in line with the reasons already rejected by the ECtHR in its judgment of 15 January 2009.<sup>3</sup> Mr. Paunkovski appealed that decision.

The applicants are deeply worried by the explicit refusal of the Macedonian Government (the letter of the Ministry of Justice) to re-register the Association of citizens Radko. The applicants are also deeply worried by the fact that in refusing to register Association Radko, the Central Registry chose to rely on exactly the same arguments that have already been reviewed and rejected by the ECtHR in its judgment.

In view of all of the above, the applicants in *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia*, would like the Committee of Ministers to indicate to the Macedonian Government that it is

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<sup>1</sup> See Exhibit No. 1.

<sup>2</sup> See Ministry of Justice letter, Exhibit No. 2.

<sup>3</sup> See Decision of the Central Registry, Exhibit No. 4.

obliged to take individual measures to remedy violations of the Convention, found by the European court of Human Rights, and that in the particular case, registering Association of Citizens Radko, is such an individual measure, that the Macedonian Government is obliged to take. Further, the applicants would like the Committee of Ministers to request the Macedonian Government to indicate the practical measures it would take to assist them in re-registering the Association of Citizens Radko.

Sincerely Yours,

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