MEMORANDUM OF LAW

VIABILITY OF THE RAINBOW CASE BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

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Pavlos Voskopoulos, a member of Rainbow,¹ is an ethnic Macedonian living in Greece. In April 2005, Mr. Voskopoulos applied for a name change at the local Prefect in Florina, Greece in order to incorporate his traditional Macedonian surname, Filipov, into his current surname, i.e., to register the name "Pavlos Filipov Voskopoulos." After consulting with the Greek Ministry of Internal Affairs, the Prefect rejected Mr. Voskopoulos’ request. Mr. Voskopoulos appealed the decision to the General Secretary of the Region of Western Macedonia, who upheld the Prefect’s decision since, unbeknownst to Mr. Voskopoulos, the appeal was filed too late. The case is now pending before the administrative appeals court in Athens.

Minority Rights Group International (“MRG”) requested an official advice memorandum from the Human Rights and Genocide Clinic at Benjamin N. Cardozo’s School of Law. Specifically, MRG asked the Clinic to assess the viability of a potential claim by Mr. Voskopoulos before the European Court of Human Rights (“ECHR” or the “Court”) should the outcome of domestic proceedings in his case in Greece not be in his favor.

In reviewing Rainbow’s application to MRG on behalf of Mr. Voskopoulos, along with the history of the Macedonian minority in Greece, Greece’s domestic and international legal obligations toward minorities, and the relevant ECHR case law, the Clinic found that Mr. Voskopoulos has a viable claim before the Court under Articles 8 and 14 of the European Convention on Human Rights (“the Convention”).

Article 8 of the Convention addresses the right to private and family life. The Court has read in to this Article the right to establish the details of one’s identity and, specifically, the right to a name. The ECHR typically takes a 2-part approach in considering Article 8 claims. The Court considers whether the level of inconvenience caused to the petitioner as a result of the refusal to register his name qualifies as an interference within the meaning of Article 8 § 1, and, if so, the extent to which the State was justified, under Article 8 § 2, in so interfering. While the Court

¹ Rainbow is an organization of the ethnic Macedonian minority living within the boundaries of the Greek state. It is a non-profit organization committed to advocating for minority rights for ethnic Macedonians, as codified in international agreements and commitments. Rainbow’s strategic objective is to secure recognition as equal citizens, as well as equal rights and opportunities as ethnic Macedonians in Greece and within the EU. Rainbow’s strategic objective concerning language use is the introduction of lectures in Macedonian (standard) language within the nine-year educational system in those places in Greece where ethnic Macedonians live and the language is spoken and the establishment of a Department of Macedonian language within the university education system. MRG Information Form for International Complaints. para. 7.
traditionally grants the State a wide margin of appreciation when conducting this analysis, its
defferential approach is occasionally tempered by contextual and historical factors and, even
where a wide margin is afforded, this does not prevent the Court from finding violations of
Article 8.

Article 14 of the Convention applies where any of the rights granted by the other articles of the
Convention have been interfered with in a discriminatory manner. According to the Court’s case
law, such differential treatment toward people similarly situated must be justified by a legitimate
State aim and narrowly tailored toward the achievement of that aim. The substantial discretion
reserved to the Prefect under the restriction at issue does not satisfy these requirements, and
allows for the continued mistreatment of Macedonians under Greek law and the perpetuation of
Greece’s discriminatory policies toward Macedonians. The Prefect’s denial of Mr. Voskopoulos’
request is evidence of this discrimination in practice. Since the court will typically find an Article
14 analysis unnecessary where it finds a violation of Article 8, the Clinic believes that the
substantive violations of Mr. Voskopoulos’ rights under Article 8 will therefore be
determinative.

According to the Clinic, the facts of Mr. Voskopoulos’ claim satisfy the criteria necessary for the
Court to find violations of Articles 8 and 14. Mr. Voskopoulos has suffered a grave, discriminatory interference with his Article 8 rights. Greece’s proffered and anticipated justifications for this interference are not compelling enough to excuse this violation, and Greece has made no attempt to narrowly tailor its restrictions in order to accommodate its citizens’ rights.

The ECHR requires that the substance of the violations of Articles of the European Convention
be raised in the domestic courts before an applicant can pursue those claims in the ECHR. In
order to ensure that Mr. Voskopoulos’ claims will be admissible in the ECHR, Mr. Voskopoulos’
counsel should therefore raise these issues and, if possible, plead violations of Articles 8 and 14
of the European Convention in the administrative appeals court in Athens.

BACKGROUND

To the Greek government, the term “Macedonian” is a geographic term, describing those
citizens of Greece who live in the northern, Macedonian, region of the country. Denying that
these northern Greeks are ethnically distinct from the rest of the Greek population, the
government denies recognition of the Macedonians as a distinct minority group, instead referring
to them as “Slavophone Greeks” or “bilinguals.” Relying on the Lausanne Treaty of 1923,

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2 Article 35 of the European Convention regarding exhaustion of domestic remedies
which confirmed the existence, and protected the rights of the Muslim [predominantly Turkish] minority in Western Thrace, Greece asserts that the Muslim minority is the only minority in Greece.

To the ethnic Macedonians, the term “Macedonian” indicates a person with a cultural heritage different from that of the Greek majority—one of Slavic origin and distinct Macedonian linguistic background. The Macedonian community in northern Greece has existed at least since the nineteenth century. This community has long suffered extensively from discriminatory governmental policies, including forced name changes, internment, and the ban on the use of the Macedonian language, and the denial or deprivation of Greek citizenship.

To this day, the Greek government denies the existence of an ethnically distinct Macedonian minority in Greece, referring instead to ethnic Macedonians as “Slavophones” or “Slav-speakers.” The official Greek position is that the Greek state is ethnically homogeneous, with the single exception of the recognized Muslim minority in western Thrace. A publication issued by the Greek Foreign Ministry states:

Greece rejects the claim advanced by Skopje for recognition of a ‘Macedonian’ minority for the very simple reason that since the Greek-Bulgarian exchange of populations in 1919 there has been no Slav minority in Greece...

In the past, there were undoubtedly persons with a Slavic national consciousness, who sometimes behaved as Bulgarians and sometimes as Slav-Macedonians. But after the Second World War and the end of the Greek Civil War, these persons took refuge elsewhere, principally in Yugoslavia … a very small group still speak[s] the dialect in Greece.

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4 Denying Ethnic Identity: The Macedonians of Greece. Human Rights Watch / Helsinki [Formerly Helsinki Watch], p. 1, available at http://www.hrw.org/reports/pdfs/g/greece/greece945.pdf. See also The Balkan Human Rights We Pages, The Macedonians, www.greekhelsinki.gr/Minorities_of_Greece.html: “[T]he Greek propaganda in the nineteenth century inadvertently contributed significantly in the development of the Macedonian identity…. Greek propaganda in [Macedonia] focused on the revival of its Macedonian name, the learning of and the identification with the glorious history of ancient Macedonians and Alexander the Great …. The effort was successful, as in the end of the century, most inhabitants of Macedonia proudly called themselves Makedones (in Greek), Makedontsi (in Macedonian), Makedoneni (in Vlach).”

5 See generally, Id at p. 7 -9.

6 The Macedonian Affair: A Historical Review of the Attempts to Create a Counterfeit Nation, Institute of International Political and Strategic Studies [undated; apparently issued in 1991], p. 30. Further, Greece’s reference
Local Greek officials’ statements reflect the position of the Greek government. Former Florina Nomarch [head of the regional department, or prefecture] Nikolas Koukoulas told a Human Rights Watch fact-finding mission in July 1993: “There is no minority here; everyone in the Macedonian region is Greek.”\(^7\) Similarly, the Mayor of the city of Florina, Anastasios X. Kotsopoulos, told the mission: “There are no minorities in Greece; everyone is Greek.”\(^8\)

**GREECE’S TREATMENT OF ITS MACEDONIAN MINORITY VIOLATES INTERNATIONAL HUMAN RIGHTS LAW**

As demonstrated above, Greece denies the existence of a Macedonian minority within its borders. Moreover, in accordance with Greek nationalist ideology, successive Greek governments have failed to acknowledge the existence of a distinct Macedonian ethnic identity and Macedonian language. The attitude of Greek authorities to the very concept of minority rights deserves particular attention. Greece’s attitude toward the Framework Convention on the Protection of National Minorities (“FCNM”), which Greece has signed, but not ratified, exemplifies the official Greek attitude. On 22 November 2005, the Sub-Committee on the Framework Convention on the Protection of National Minorities held a hearing on the non-ratification of the Convention by nine of the 46 member-states of the Council of Europe. Notably, Greece was amongst this group of countries, which one might say, are “in the minority on the issue of minorities.” A Greek government representative, Mr. Georgios Ayfantis stated before the committee that Greece considers that the FCNM was “a useful tool for the disintegration of the Soviet Union” and for the “bringing down of the Milosevic regime” but is irrelevant today.\(^9\) He also added that if Greece were to ratify the FCNM, “…there would be no

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\(^7\) *Denying Ethnic Identity*, at 11-12.
\(^8\) *Id*, at 12.
improvement for the man on the street, just more work for the [sic] Greece in the Council of Europe.”

Even evaluating this statement without considering the Macedonian minority in Greece, Ayfantis’s statement denies that the interests of Greece’s one officially recognized minority, the Muslims in Thrace would be served by Greece’s ratification of the FCNM. All minorities in Greece, not just the unrecognized Macedonians, would benefit from Greece’s signing the FCNM.

The FCNM emphasizes that “[e]very person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.”

Mr. [blank], as a member of the Macedonian minority within Greece should have the right, therefore, to choose the extent of his affiliation with that minority. Further, the FCNM prohibits states from using assimilationist policies and promotes minority identity including the right of “every person belonging to a national minority …to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.” Under Article 18 of the Vienna Convention on the Law of Treaties, Greece, as a signatory of the FCNM, is obliged not to take any actions that would frustrate the object and purpose of that treaty during the period between signature and ratification. Yet, by denying the existence of the Macedonian minority, and by attempting to assimilate it entirely into Greek majority culture via denials of the rights mandated by the FCNM, Greece is indeed acting in a manner that is contrary to the object and purpose of the treaty.

The protection of full rights for all citizens, including those belonging to national minorities, has been recognized numerous times, in declarations of international bodies including

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10 Id.
11 Framework Convention on the Protection of National Minorities art. 3(1).
12 Id. art. 5(2) (“Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.”)
13 Id. art. 11(1). The Explanatory Report for the FCNM, para. 68, stresses that “Persons who have been forced to give up their original name(s), or whose name(s) has (have) been changed by force, should be entitled to revert to it (them) … It is understood that the legal systems of the Parties will, in this respect, meet international principles concerning the protection of national minorities.”
14 Vienna Convention on the Law of Treaties art.18 (“A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”)
the EU, the OSCE, and the UN. By stepping away from a commitment that is increasingly becoming a requirement for full participation in the international community, Greece risks international disapproval. In fact, to join the European Union, a new Member State must meet three criteria, including respect for and protection of minorities. The European Council is not allowed to open negotiations until these three criteria are met. In this way, minority rights have acquired the status of EU *acquis communautaire*. Greece should adopt the FCNM, as well as other treaties discussed below, as a sign of recognition of and adherence to international norms.

In addition to frustrating the object and purpose of the FCNM, the Greek government’s denial of the existence of the Macedonian minority violates international human rights agreements to which the government of Greece is a party. Personal identity is a matter to be determined by an individual, and not by the state. The 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe [CSCE] states:

> To belong to a national minority is a matter of a person’s individual choice and no disadvantage may arise from the exercise of such choice. Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will.

Greece, as a signatory to the Copenhagen Document, may not choose for its citizens the groups to which they may belong, or the heritage with which they may identify. Nor may Greece deny that the Macedonians exist as a distinct group within Greece in order to attempt to assimilate them against their will. The CSCE participating states have emphasized the

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16 CYNTHIA CAN YOU CITE THE TREATY OF LISBON. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.


18 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, para. 32.
importance of respecting minority rights, “reaffirm[ing] that respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy in the participating States.” ¹⁹ By signing the Copenhagen Document while refusing to recognize the Macedonians within its borders, Greece contravenes the spirit of the Document.

The Copenhagen Document was followed in 1998 by the Oslo Recommendation Regarding the Linguistic Rights of National Minorities. ²⁰ The Oslo Recommendation maintains that people “belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems. These shall be given official recognition and be used by the public authorities.” ²¹ The comments to the Recommendation further specify that “persons who have been forced by public authorities to give up their original or ancestral name(s) or whose name(s) have been changed against their will should be entitled to revert to them without having to incur any expenses.” ²² Greece participated in the negotiations surrounding the drafting of the Oslo Recommendation, and signed the document. As the international standards for the protection of national minorities becomes more detailed, Greece seems to agree with the international norms. Yet, Greece maintains a domestic policy that is in direct conflict with the international standards it has agreed to follow. According to The Balkan Human Rights Web Pages,

From an international human rights point of view, the most important discrimination against the [Macedonian] minority is the official refusal to recognize it, even as a linguistic one, with the consequence that there is no education in Macedonian, not even any teaching of the Macedonian language in the public schools of villages and towns with large, if not exclusive, Macedonian

¹⁹ Id. para. 30.
²¹ Id. The language of this recommendation finds support in various international declarations. The language of the Universal Declaration of Human Rights (“a]ll human beings are born free and equal in dignity and rights”) leads to the Oslo statement that “Language is one of the most fundamental components of human identity. Hence, respect for a person’s dignity is intimately connected with respect for the person’s identity and consequently for the person’s language.” The recommendation is also supported by Article 2 of the ICCPR; Articles 10 and 14 of the Convention on the Protection of Human Rights and Fundamental Freedoms; paras. 9.1-9.3 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension, and the Charter of Paris for a New Europe (affirmation of the heads of government), among others.
²² Referencing FCNM art. 11(1)
population. The Greek authorities may be partners of the CSCE agreements that call for the respect of the self-determination of the minorities, but they do not acknowledge that there are Greek citizens who declare having not a Greek but a Macedonian consciousness and national identity; or just a Macedonian ethnic identity and no national identity …

Greece continues to assert that since it does not recognize the Macedonian minority officially, that group does not exist. At the OSCE summit in October of 2006, the United States delegation mentioned as a concern the “treatment of persons belonging to ethnic Albanian, Macedonian and Turkish minority groups in Greece” and “urge[d] Greece to implement a comprehensive view of ethnicity and human rights incorporating customary international law and its OSCE commitments, including the right of individuals to identify their nationality without disadvantage.” The Greek delegation contested the American characterization of the Macedonians as a minority in Greece, saying:

Let me underline that almost two and a half million Greek Macedonians really loathe to be downgraded to the status of a “minority” in a region, Macedonia, they have inhabited for thousands of years. If by the term “Macedonian minority” the distinguished representative implies the existence of a handful of Greek citizens, who wish to identify themselves with the Slav-Macedonians of our northern neighbor, the Former Yugoslav Republic of Macedonia, then let me inform him that the members of this group are full-fledged citizens of my country, enjoying equal rights, being free and able to express their views, form political parties and associations.

The fact that a small number of persons who live in Northern Greece use, without restrictions, in addition to the Greek language, Slavic oral idioms, confined to family or colloquial use, does not indicate the existence of a minority, since the

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24 United States Mission to the OSCE, Session 14: Promotion of Tolerance and Non-Discrimination National Minorities (Warsaw, October 11, 2006).
persons using these idioms have never considered themselves other than Greek and vehemently reject any attempt by some circles to define them as members of a different national, ethnic or linguistic group. ²⁵

The Greek delegation further declared that Greece was not in violation of international standards for the treatment of minorities since “[i]nternational law does not place upon States the obligation to officially recognize a group of persons as a “minority”, solely on the basis that a small number of their citizens occasionally make use also of other, local idioms.” ²⁶ This exchange demonstrates both international concern regarding Greece’s treatment of its citizens whose heritage is not solely Greek, as well as the Greek government’s firm position that a Macedonian minority does not exist in Greece. Further, by downgrading the Macedonians’ language to the status of a “local idiom” Greece denies the independent identity of the Macedonians living within its borders.

Even if Greece denies the existence of a distinct Macedonian minority within its borders, as international attention turns increasingly to the rights of individual citizens of states, Greece will not be able to maintain its discriminatory policies. The Lund Recommendations on the Effective Participation of National Minorities in Public Life eliminate the “belonging to a national minority” qualifications from the discussion of identity. Instead, the Lund Recommendations focus on the rights of individuals:

Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose. ²⁷

²⁵ OSCE HDIM-Working Session14: Promotion of Tolerance and Non-Discrimination. National Minorities; Statement by the Greek Delegation in exercise of its Right of Reply, HDIM.DEL/583/06 (12 October 2006).
²⁶ Id.
The Explanatory Note to the Lund Recommendations emphasizes further that this recommendation is meant to protect individuals’ rights of self-identification:

An individual’s freedom to identify oneself [sic] as one chooses is necessary to ensure respect for individual autonomy and liberty. An individual may possess several identities that are relevant not only for private life, but also in the sphere of public life. Indeed, in open societies with increasing movements of persons and ideas, many individuals have multiple identities which are coinciding, coexisting or layered ... reflecting their various associations. Certainly, identities are not based solely on ethnicity, nor are they uniform within the same community;  

Thus, Europe increasingly recognizes the rights of individuals to identify themselves as they choose. Greece’s persistent refusal to allow the ethnic Macedonians official acknowledgement of that part of their identity is contrary to the European standard of individual liberty. By refusing to let individuals including Mr. Voskopoulos freely identify with his Macedonian heritage via registration of his ancestral name, Greece demonstrates its unwillingness to meet European standards for individual rights. Even if Greece continues to refuse to recognize that there is a substantial Macedonian minority in the north of the county, the denial of the group’s existence may not be used to inhibit the rights of individuals to identify with their own heritage.

Similarly, even if Greece refuses to recognize that the Macedonian language spoken in Florina and other northern Greek areas is more than a “Slavic oral idiom,” the Greek government still retains the obligation to protect that dialect under international law. The European Charter for Regional or Minority Languages establishes that there should be no “unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it.” Thus, even if one was to accept the Greek delegation’s assertion that the use of the Macedonian language in

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28 Id. Explanatory Note I(4).
29 European Charter for Regional or Minority Languages, art. 7(2), available at http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm. Although Greece has neither signed nor ratified the Charter, and is therefore not bound by it, the normative value of widely accepted human rights standards and their persuasive force before the ECHR should not be underestimated.
Greece is confined to “a small number of persons who live in Northern Greece [who] use, without restrictions, in addition to the Greek language, Slavic oral idioms, confined to family or colloquial use,” one must ask the additional questions of why that language is downgraded to a set of “Slavic oral idioms” and confined to “family or colloquial use.” The use of a “regional . . . language,” even if not a language of a recognized minority, should be protected.

In contradiction to the aforementioned international treaties and agreements, as well as others not detailed above, Greece has failed to protect the rights of those of its citizens who wish to identify with their Macedonian heritage. By doing so, Greece invites a finding that it has violated Article 14 of the Convention in connection to Article 8, which requires that, “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Greece has also signed, but not ratified, Protocol 12 to the Convention, and has an obligation under international law not to frustrate the object and purpose of Protocol 12. Article 1 of Protocol 12 expands the nondiscrimination principle set forth in Article 14 of the ECHR, stating that

(1) The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national

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30 Again, Macedonian is confined to private use largely through the hellenization policies of the Greek government, the language oaths, and the banning of the use of Macedonian in public (see Background section, supra p. 2 et seq.).

31 Minority rights and states’ responsibilities to protect those minorities within their borders are also recognized in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 1(1), adopted Dec. 18, 1992 (states shall “protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”); Vienna Declaration of October 9, 1993 by the heads of state of the member states of the Council of Europe, Appendix II: National Minorities (“States should create the conditions necessary for persons belonging to national minorities to develop their culture, while preserving their religion, traditions and customs. These persons must be able to use their language both in private and in public and should be able to use it, under certain conditions, in their relations with the public authorities.”); Universal Declaration of Human Rights art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

32 ECHR art. 14.
minority, property, birth or other status. (2) No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.\textsuperscript{33}

The Explanatory Report to Protocol 12 notes further that “[t]he general principle of equality and non-discrimination is a fundamental element of international human rights law” and that Protocol 12 seeks to recognize this principle by expanding the protections in Article 14 of the ECHR and to prohibit discrimination beyond the contours of the Convention.\textsuperscript{34}

The normative force of the many international and European declarations on the rights of minorities, both individually and collectively, combined with Greece’s repeated denials that these rights extend to all Greek citizens (not just to the one recognized Muslim minority in Thrace) demonstrates Greece’s violation of international law.\textsuperscript{35}

\textbf{FACTS OF THE CASE}

During the 1930s, when the personal names of the Macedonian speaking population were forcibly changed and replaced with Greek names, the [family] family was forced to change its surname to “[family]”. In April 2005, [name], an ethnic Macedonian and member of this family, made an application to the local Prefect of Florina, his hometown, to add his traditional Macedonian surname to his current surname, i.e., “[name]”. According to Greek law, the Prefect has absolute discretion in granting such applications and may simply approve or reject the name “change” request. In making his determination, the


\textsuperscript{35} Additional evidence of Greece’s violation of the spirit, if not the letter, of international law, is found in Greece’s disregard for the international standards on minority language rights. The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly on December 18, 1992, art. 2(1) states that “Persons belonging to national or ethnic, religious and linguistic minorities … have the right … to use their own language, in private and in public, freely and without interference or any form of discrimination. The Declaration also places affirmative obligations on states with regard to minority languages: “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue (art. 4(3)). By denying that the Macedonian language is more than a “Slavic oral idiom,” Greece contravenes these international standards. Similarly, Greece violates article 27 of the International Covenant on Civil and Political Rights (“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”).
Prefect may choose to consult with the Ministry of Internal Affairs. In this case, the Prefect decided to consult with the Ministry and, in March 2006, the Ministry issued a written opinion on the matter, and suggested that the Prefect reject the application based on the following grounds:

The change of the applicant’s surname from a Greek to a ‘foreign’ name should be rejected because to allow such an act might result in confusion as to the nationality of the applicant and thus might result in difficulties in matters and contacts between the applicant and Greek authorities.\(^\text{36}\)

Based on the Ministry’s advice, the Prefect rejected Mr. Voskopoulos' request. The matter was then appealed to the General Secretary of the Region who upheld the decision.\(^\text{37}\) The case is now pending before the highest administrative Court in Greece. If the Administrative Appeals Court upholds the decision of the court below, and if ECHR law appears favorable to his position, Mr. Voskopoulos, anticipates bringing the case before the ECHR, under Articles 8 and 14 of the Convention.

MERITS

1. ARTICLE 8 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS ENCOMPASSES THE RIGHT TO A NAME

Article 8 Provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-

\(^{36}\) Rainbow, Form for International Complaints to MRG, para. 29
\(^{37}\) MRG Information Form for International Complaints, para. 29.
being of the country, for the prevention of disorder or crime, for the protection of the health or morals, or for the protection of the rights and freedoms of others.38

While Article 8 does not explicitly address the right to official recognition of a particular name, a person’s name nonetheless falls within this Article since, as a means of personal identification and connection to one’s family, a person’s name concerns his or her private and family life.39 According to the ECHR:

The fact that society and the State have an interest in regulating the use of names does not exclude this [application of Article 8], since these public-law aspects are compatible with private life conceived of as including, to a certain degree, the right to establish and develop relationships with other human beings, in professional or business contexts as in others.40

The Court recently confirmed its recognition that Article 8 encompasses the right to a name in 2007, and stated that “[t]he Court has, on several occasions, recognized the applicability of Article 8 – in relation to both ‘private life’ and ‘family life’ – to disputes concerning people’s surnames and forenames … The subject matter … thus falls within the ambit of Article 8 of the Convention.”41

A State’s refusal to register a name, however, is not automatically considered an illegal interference with the right to respect for private life under Article 8.42 Instead, in order to make this determination, the Court carefully weighs the effects of the restriction on the applicant and the validity and importance of the State’s interests in imposing the restriction. Specifically, the

42 Id.
Court examines whether the inconvenience to the applicant is sufficient to amount to an interference within the meaning of Article 8 § 1, and, if so, whether that interference is “in accordance with the law,” in pursuit of a legitimate governmental aim, and narrowly tailored to the achievement of such a legitimate aim, as required by the Court under its interpretation of Article 8 § 2. If the Court deems the restriction an interference, and determines that the interference fails to satisfy the required conditions of Article 8 § 2, the Court will hold the restriction invalid, i.e., an illegal interference.

II. GREECE’S REFUSAL TO REGISTER MR. MACEDONIAN NAME CONSTITUTES AN INTERFERENCE WITHIN THE MEANING OF ARTICLE 8 § 1

The ECHR requires that an applicant claiming a violation of Article 8 rights demonstrate that the State’s restriction at issue entails infringements on his private life that are so grave as to amount to an “interference.” Where a restriction creates minimal hardship, such as the need to explain slight differences in the spelling of officially-registered and private names, complications arising from differences between the name as used and the name as officially recorded, and the inability to register a name to prevent further mispronunciations of a current name, the Court has refused to find a violation of Article 8 rights.

For example, in Guillot v. France, the Court found that, while the forename requested by the applicants differed somewhat from the legal forename allowed by the State and entailed some complications as a result, these complications were not considered sufficient to amount to an interference. The applicants in Guillot attempted to give their daughter the name “Fleur de Marie.” The French registrar, however, refused to register this name on the ground that it did not appear in any calendar of saints’ days and, furthermore, that such an “overly whimsical” name

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45 See Guillot v. France. Where the Court found that the difference in the spelling of an original name and the phonetic spelling of the name officially recorded with the state is an inconvenience, not an interference. The issue here arose from such a difference in spelling, causing the applicant to continually face confusion, and the need for explanation, among state authorities reading the two spellings.
46 Id.
47 See Stjerna v. Finland and Mencena v. Latvia, judgment of 7 December 2004, No. 71074/01.
48 Guillot v. France, para. 27.
was not in the best interests of the child. The Court noted that the child regularly used the forename “Fleur de Marie” without hindrance and that the State allowed her to register an alternate version of the name, i.e., “Fleur-Marie.” The parents claimed that they suffered despite this accommodation by the state because “[e]very time they had to go through formalities concerning the child, they had the painful task of explaining the difference between her usual forename and the one recorded at the registry of births, deaths and marriages.” The Court found needing to explain the name to officials did not rise to the level of interference, and thus did not constitute a violation of Article 8.

In Stjerna v. Finland, the Court likewise found that the inconveniences arising from the State’s refusal to change the petitioner’s name were insufficient to constitute an interference. In that case, the applicant sought to change his name from “Stjerna” to “Tavaststjerna.” Mr. Stjerna claimed that his current surname was problematic because it was an old and uncommon Swedish name that was difficult for non-Swedish speaking Finnish persons to pronounce and spell. Mr. Stjerna asserted that, as a result, he was called by a derogatory nickname, and his mail was often delayed. He argued that the name “Tavaststjerna” was more common to the region and would therefore not be so easily confused or transformed into such a nickname. The Court, however, did not consider the inconveniences Mr. Stjerna suffered, or his attachment to the requested name, significant enough that the State’s denial of his request constituted an interference. The Court also determined that the requested name change would not obviate Mr. Stjerna’s inconveniences.

In a case more recently decided by the Court, Bulgakov v. Ukraine, the Court considered whether a transliterated name would create an interference with Article 8 rights:

[S]imple transliterations (i.e. the straightforward adaptation of foreign surnames to the customary rules governing the phonetics and grammar of a given language)

49 Id. at paras. 8 and 13.
50 Id. at para. 24.
51 Id. at para. 27.
53 Id. at paras. 9, 40.
54 Id.
55 Id. at paras. 11, 13.
56 Id. at para. 41.
57 Id.
58 Case of Bulgakov v. Ukraine, app. no. 59894/00, judgment of 11 September, 2007.
… [are] comparable to the transliteration into Western languages of Russian family names … or to the addition by the Romans of variable endings to Gaul or German names … In such cases, even if a proper noun is adapted to the host country’s language, it nonetheless retains its foreign sound, unique to the language of origin. Its holder’s ethnic and national identity is therefore not affected\(^{59}\) [Emphasis added].

Hence, where a name has been adequately transliterated, the Court will not find interference, since the ethnic sound of the name, and therefore the person’s identity, is not diminished in any way. This implies, however, that where the ethnic character of one’s name is diluted, through an improper transliteration or otherwise, the Court is likely to find an interference.

The problems suffered by Mr. [redacted] as a result of Greece’s refusal to register his Macedonian surname as part of his full name constitute an interference within the meaning of Article 8 as interpreted by the Court. Because of the Greek restriction, Mr. [redacted] suffers the complete denial of a central part of his identity – his Macedonian heritage – daily; a burden far greater than that associated with the misspellings or slight mispronunciations found in other cases. As the Court in \textit{Bulgakov} warned within the context of transliteration, the result of Greece’s refusal to register Mr. [redacted]’ ethnic Macedonian family name is the complete obstruction of its ethnic character and hence of Mr. [redacted]’ identity.

Mr. [redacted] is a member of Rainbow, a non-profit organization committed to furthering the rights of ethnic Macedonians. He is also an outspoken and active advocate for the rights of ethnic Macedonians in Greece. As a member of the human rights group, the Macedonian Movement for Balkan Prosperity (“MMBP”), he told a Human Rights Watch fact-finding mission:

\begin{quote}
I am Macedonian. I am different from other Greek citizens. I have a different culture; I got it from my father and my grandfather. I speak a different language. I grew up speaking Macedonian at home and Greek in school. I was born in 1964; until I was six years old I spoke only Macedonian. Especially in the villages,
\end{quote}

\(^{59}\) \textit{Id.} at para. 46.
people talk in Macedonian. The heart of the matter is that we just want to be accepted and recognized as a different ethnic group. We believe that recognizing different ethnic groups is a richness for Greece and for Europe. For eighty years the government has tried to make us Greeks.⁶⁰

Being Macedonian is demonstrably central to both Mr.’s public and personal life. However, in preventing Mr. from linking a central component of his personal identity – his familial, linguistic and cultural background – with his public persona in Greece and the Macedonian community, the Greek restriction requires Mr. to maintain a split-identity. By requiring Mr. to assume an exclusively Greek name, Greece forces him, in effect, to confine his Macedonian identity to his home; it prevents Mr. from publicly declaring – through his name – a sense of pride in and an affinity for Macedonian culture and his family history, and greatly affects his authority within the Macedonian community as both a supporter and a leader in the struggle for Macedonian rights. Ultimately, the restriction at issue alienates Macedonians, generally, from the public sphere and society at large, perpetuating the discrimination Greece has subjected them to for decades.

The interference suffered by Mr. is of the magnitude described in Goodwin v. the United Kingdom, where the Court held that transsexuals have a right to change indications of their past gender on public documents or in their names. There, the ECHR recognized that restrictions which cause discordance between one’s public, and legally allowed, identity and the identity one strongly relates to in his private life constitute interferences under Article 8. According to the Court in that case, “[i]t must … be recognized that serious interference with private life can arise where the state of domestic law conflicts with an important aspect of personal identity.”⁶¹ The Greek restriction at issue here creates the very discordance the Goodwin case addresses and constitutes an interference with Mr.’ Article 8 rights.

⁶¹ Christine Goodwin v. United Kingdom, para. 77.
III.  GREECE’S INTERFERENCE WITH MR. VOSKOPOULOS’ ARTICLE 8 § 1 RIGHTS IS NOT JUSTIFIED UNDER ARTICLE 8 § 2

A finding that the Greek restriction amounts to interference does not end the Court’s analysis. Because the main objective of Article 8 is to protect individuals against arbitrary interferences by public authorities, the Court must also determine whether the interference is warranted under Article 8 § 2. The Court therefore analyzes whether the interference is “in accordance with the law,” whether the State’s aim in denying the name-registration application is “legitimate,” and whether the interference is “necessary in a democratic society,” i.e., whether the interference is narrowly tailored to achieve this legitimate end. An Article 8 violation exists only where the Court determines that the interference is present and that it is not warranted under Article 8 § 2.

In Bulgakov, the Court reiterated that states are afforded a wide margin of appreciation in an Article 8 analysis:

In [the Member States of the Council of Europe], the use of names is influenced by a multitude of factors of an historical, linguistic, religious and cultural nature, so that it is extremely difficult, if not impossible, to find a common denominator. Consequently, the margin of appreciation which the State authorities enjoy in this sphere is particularly wide.

Despite the traditionally wide margin of appreciation afforded to states in name cases under Article 8, the Greek name registration law must fail, as it does not meet the requirements of Article 8 § 2.

A. The Infringement of Mr. VOSKOPOULOS’ Article 8 Rights is Not “In Accordance with the Law”

62 Id.; see also Johansson v. Finland, para. 29.
63 Id.
64 Johansson v. Finland, paras. 29, 34 and 35.
65 Id.
66 Id., para. 43(c).
Article 8 § 2 requires that any interference with private and family life be “in accordance with the law.” According to the ECHR, this assessment requires:

[F]irstly, that the impugned measures should have some basis in domestic law; secondly it refers to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and that it is compatible with the rule of law.\(^67\)

Greece’s denial of Mr. Voskopoulos’ name registration application does not meet this standard.

i. **The Interference Lacks a Basis in Greek Domestic Law**\(^68\)

The Greek Constitution, revised in 2001, declares that, “Respect and protection of the value of the human being constitute the primary obligations of the State.”\(^69\) More specifically, “All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.”\(^70\) Nevertheless, Greek authorities deny persons of Macedonian heritage the respect and protection of that cultural heritage, and the right to develop their Macedonian identity as part of their personality.

Further, Article 5 (2) of the Greek Constitution guarantees that, “all persons living within the Greek borders shall enjoy full protection of their life, honor and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.”\(^71\) Any derogation from the constitutional rights

\(^67\) *Doerga v. The Netherlands*, para. 21.
\(^68\) The Clinic’s attempts to locate the text of the Greek name registration law have proven unsuccessful. This analysis is based solely on the Greek Constitution of 2001, and on Rainbow’s application to MRG. Depending on the text of the Greek name registration law that Mr. Voskopoulos’ name change request falls under, the arguments presented in this section might be different.
protected by articles 5(1) and (2) that is not in accordance with international law is, therefore, not in accordance with Greek law. By denying Mr. [redacted] the right to “develop freely [his] personality” via official recognition of his Macedonian name, Greek name registration practices violate the Greek Constitution, and are therefore not “in accordance with the law.”

Greece further violates its own domestic law by ignoring the application of international minority right standards to the Macedonians within Greece. Article 28 of the Greek Constitution mandates that “the generally recognized rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law.”

Greece is a party to numerous international and European Union specific treaties on minority rights, thereby asserting its commitment to protecting those minorities living within Greek territory. By denying the Macedonians the rights mandated by international law, Greece violates the spirit of each of these treaties. Greece’s interference with Mr. [redacted]’ Macedonian name registration is, therefore, neither in accordance with domestic (constitutional) law nor with international law.

ii. The Name Registration Law Does Not Provide Adequate Safeguards Against Arbitrary Enforcement

In addition to assessing whether the restriction at issue is based in domestic law, the Court also considers the relevant law’s “accessibility” and “quality.” According to the Court, a law must be 1) accessible enough so that an individual has an indication “that is adequate under the circumstances of the legal rules applicable to a given case;” 2) formulated with sufficient precision “to allow the citizen to regulate his conduct” and therefore foresee the result of a given restriction.

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72 The Constitution of Greece art. 28(1) (emphasis added).
action; and 3) must “provide safeguards against abuse,” so that the discretion exercised in the enforcement of the law yields a foreseeable result. 74

Greece gives broad discretion in the application of the name registration laws to local administrators, and fails to provide adequate safeguards against abuse. 75 Decisions on whether to accept applications for name registration are made by the local prefect who may decide to consult with the Ministry of the Interior before making a decision on whether to allow the registration of a particular name. While this law may be “accessible” to the public, it does not guarantee foreseeable results, since decisions on individual cases will depend not on a set of clearly established standards/requirements to be met, but essentially on the personal opinion of the prefect (and possibly that of the Minister of the Interior).

Discretionary enforcement based upon regional or personal prejudice leads to precisely the type of arbitrary behavior that Article 8 seeks to prevent. According to the Court’s case law, legal instruments that have been shown to yield such unforeseeable outcomes and to be subject to the unbounded discretion of those enforcing them 76 do not meet the “in accordance with the law” requirement of Article 8 § 2 of the Convention. 77

B. Protection of Greek Language and Culture is a Legitimate State Interest But May Not Be Exercised At the Expense of Minorities Living Within Greece

Even if the Court determines that the interference with Mr. ’ rights are in accordance with the law, the Court must determine whether the limitations on his rights have been adopted in pursuit of a legitimate state interest as outlined in Article 8 § 2. 78 According to the text of Article 8, such interests include national security, public safety, or economic well-being; the prevention of disorder or crime; the protection of health and morals; or the protection

74 Kevesevic v. The Federation of Bosnia and Herzegovina, para. 51 (citing Malone v. United Kingdom, judgment of 2 August 1984, Series A no. 82, para. 67).
75 Again, as the Clinic was unable to obtain a copy of the actual law, the information about the Greek name registration laws in this section is taken from Rainbow’s application to MRG.
76 Kevesevic v. The Federation of Bosnia and Herzegovina, para. 52.
77 Id. See also Gillow v. United Kingdom, para. 49 (holding that where a regulation is obscure, difficult to understand and leaves so much discretion as to make the decision unforeseeable, it is not “in accordance with the law”).
78 Stjerna v. Finland, para. 38 (recognizing that states retain a crucial role in the identification of people and may prevent an individual from taking a surname that does not belong to any of his family members).
of rights and freedoms of others. The Court has held various State interests legitimate, including protecting children from inappropriate or overly “whimsical” names\textsuperscript{79} and protecting a country’s language and culture.\textsuperscript{80}

To the extent that Greece may argue that its name registration restrictions serve to preserve its culture, this argument fails. In \textit{Mentzen v. Latvia}, where the Latvian authorities required a Latvian phonetic transcription of the applicant’s German name to appear on her passport,\textsuperscript{81} the Court declined to invalidate the Latvian law because it determined that the measure fell within the legitimate aims listed in Article 8 § 2 of the Convention-- the protection of a national language endangered by extinction.\textsuperscript{82} In coming to this conclusion, the Court noted the Latvian language’s “historical particularity,” \textit{i.e.}, the fact that it is only spoken by a limited percentage of people in Latvia, and that the Latvian language had been severely endangered during the 50 years during which Latvia remained under Soviet control.\textsuperscript{83}

The rule espoused by the Court in \textit{Mentzen} is not applicable here. The state’s interest in protecting its national language was especially strong in \textit{Mentzen}, since it involved the language of a weaker linguistic minority previously suppressed by a stronger majority. Unlike languages such as Latvian, Estonian or Gaelic, which UNESCO has recognized as endangered languages,\textsuperscript{84} there is no indication that Greek is threatened in any way, and certainly so as to justify an infringement of the applicant’s rights. According to the Court, even where a country asserts a legitimate interest in preserving its language or culture, this interest is not always strong enough to justify the measure at issue.\textsuperscript{85} Instead, the aim pursued must be “necessary to a democratic

\textsuperscript{79} \textit{Johansson v. Finland}, para. 32. (Such an aim is inapplicable in Mr. Voskopoulos’ case.)
\textsuperscript{80} \textit{Mentzen v. Latvia}, Judgment of 7 December 2004, claim No. 71074/01.
\textsuperscript{81} \textit{Id.}, at para. 19. (Juta Mentzen, who took the name of her German husband, complained of having two names on her Latvian passport, with the Latvian form Mencena more prominently displayed, interfered with her Article 8 rights. The Court recognized that Mentzen might be subject to inconveniences, but found the measure was justified by Latvia’s legitimate aim of protecting the Latvian language.)
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} \textit{Id.} at 19.
\textsuperscript{85} \textit{Johansson v. Finland}. 

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society,” according to Article 8 § 2, a term the ECHR has interpreted as “impl[ying] a pressing social need.”

In Johansson v. Finland, Finland similarly claimed that its objective in restricting registration of certain names was to maintain a distinctive name practice in Finland, and thus to preserve an aspect of Finish culture. In Finland, however, the domestic law on name registration specifically protects the rights of minorities and foreign citizens to register names that fall outside standard Finnish name practice. The Finnish Constitution provides specific protections for minorities living in Finland, and recognizes the importance of language and culture to minority and indigenous peoples.

Assuming that Greece will argue that it has a legitimate interest in protecting Greek language and culture, this argument cannot survive the Court’s scrutiny where that interest is claimed at the expense of minority populations living within Greece. Protection of Greek culture, while a valid goal, may not, according to the Court’s jurisprudence, harm the culture or the rights of national minorities. Hence, preservation of Greek culture should not be considered a legitimate justification for its practices. Rather, Greece’s refusal to register Macedonian names should be seen for what it is – an attempt to circumvent its obligations to all its citizens and under international law in order to continue to discriminate against Macedonians in the name of promoting Greek national identity.

In Sidiropoulos and Others v. Greece, Greece made a similar, “culture protection,” argument to the argument anticipated here. In Sidiropoulos, the applicants were Greek Macedonians who attempted to establish a non-profit association called the “Home of Macedonian Civilisation,” headquartered in Florina. The Greek authorities denied the applicants’ request to register the association. Before the ECHR, the Greek government submitted that the interference in question pursued several aims: the maintenance of national security, the prevention of disorder and the upholding of Greece’s cultural traditions and

86 See, e.g., Gillow v. United Kingdom, at paras. 55-56 (finding that the term “necessary to a democratic society” “implies a pressing social need.”)
87 Johansson v. Finland, para. 29. (State refused to allow the applicants to name their son “Axl Mick,” and claimed that the form of spelling did not comply with Finnish name practice)
88 Id. at para. 24.
89 See Johansson, para. 16.
historical and cultural symbols. However, the Court struck the latter justification (upholding Greece’s cultural traditions) as falling outside the boundaries of Article 11(2), and refused to accept the protection of Greek culture as a justification for denying the applicants’ Article 11 Freedom of Association rights.

The Court reasoned that any restrictions on the freedom of association “must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.” The Court found that “[m]ention 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,” and 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.” Similarly, restrictions on the Article 8 right to a name as interpreted by the Court indicate that Mr. application to register his Macedonian name should be allowed and protected within Greece, as an individual’s Macedonian identity is not a threat to Greek culture or to a democratic society.

C. The Greek Government Cannot Claim National Security as a Legitimate Interest

In advising the Florina prefect not to allow the name registration request, Greece argued that Mr. Macedonian surname would cause confusion among the Greek authorities. According to the Ministry of the Interior of Greece, “the change of … [Mr. surname was not suitable in a foreign form because this could bring confusion as for the nationality of the applicant and it would create difficulties in his exchanges and contacts with Greek authorities.” While it is plausible that a Macedonian surname alone could indicate that one is not from Greece (particularly since the Republic of Macedonia is directly north of Greece), given that Mr. Macedonian name would appear between his Greek first name and his Greek last name, the authorities should not mistake him for someone other than who he is – a Greek citizen of Macedonian heritage. The argument that officials would be

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92 Id. at para. 37.
93 Id. at para. 38.
94 Id. at para. 41.
95 Id.
96 Letter from Ministry of the Interior of Greece, in reply to Mrs. Voskopulos’ protestations to the Prefect’s decision.
confused by Macedonian names, especially where accompanied by Greek names, is therefore spurious at best.

Assuming that the Greek government will argue, as it did in *Sidiropoulos*, that the restriction here serves to maintain national security, this argument likewise fails. In *Sidiropoulos*, the Court accepted that the interference was intended to protect national security because of the context of the case, “[h]aving regard to the situation prevailing in the Balkans at the time and to the political friction between Greece and the FYROM.”97 Nine years after the *Sidiropoulos* decision, and 16 years after the breakup of the former Yugoslavia and the formation of Macedonia however, such national security arguments are outdated and merely highlight Greece’s continued reluctance to recognize Macedonian identity.

**D. Greece’s Restriction is Not Narrowly Tailored to its Asserted Aim**

Even if a legitimate interest is found by the Court, the measures employed by Greece are not narrowly tailored to meet any of these legitimate aims. According to the ECHR, in the names cases under Article 8, the principle of proportionality oblige the state to “make sure that such restrictions do not create an unreasonable burden on the individual concerned.”98 Where an individual is subjected to an “excessive burden,” the “disproportionate or excessive”99 measure will be deemed in breach of the Convention.100

In *Sidiropoulos*, while the Court accepted that Greece had a legitimate national security interest, it found that there was no evidence to suggest that any of the applicants had wished to undermine Greece’s territorial integrity, national security or public order [in forming their association]. According to the Court, “[m]ention 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’ …”101 Certainly, using a Macedonian name between a Greek forename and surname likewise cannot be considered a threat to “democratic society.” In fact, in

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97 *Sidiropoulos v. Greece*, para. 39.
98 *Powell and Rayner v. the United Kingdom*, Report of the Commission, (adopted on 19 January 1989) (finding the building of an airport close to applicants’ home not to be a significant interference with their rights, where the government took all reasonable measures to minimize the noise). *See also Gillow v. United Kingdom*, paras. 57 and 58.
99 *Sunday Times v. United Kingdom*, judgment of 26 April 1979, Series A No. 30, para. 48
100 Id.
101 *Sidiropoulos*, para. 41
the interests of democracy, where diversity and respecting the rights of all people should be important, Greek officials should become accustomed to seeing such Macedonian names accompanying Greek names. As the Court stated in *Sidirooulos*:

Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region’s culture, even supposing that it also aimed partly to promote the culture of a minority; 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.”

Ultimately, the Court in *Sidirooulos* found that “the refusal to register the applicants’ association was disproportionate to the objectives pursued.” Because the registration of a Macedonian name, especially when placed between two Greek names, is not a threat to Greek democracy and has no discernible impact on national security, the Court should reach the same result in Mr. Voskopoulos’ case. As in *Sidirooulos*, any assertion of a national security justification in Mr. Voskopoulos’ case would be a pretext for discrimination against Macedonians.

Furthermore, accommodations of the sort recognized in *Mentzen*, *Guillot*, and *Bulgakov* have thus far not been offered to Mr. Voskopoulos. He was not offered the option of a modified version of his Macedonian name, he was not allowed to register a similar name, and there is no procedure in place which would ultimately guarantee him registration of his Macedonian name. Instead, as a result of the Florina Prefect’s discretion, Mr. Voskopoulos’ officially registered name entirely omits his Macedonian name.

### E. Greece Should Not be Afforded a Wide Margin of Appreciation

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102 *Id.* at para. 41.
103 *Id.* at para. 47.
104 See *Sidirooulos* at para. 41.
105 *Mentzen v. Latvia*.
106 *Guillot v. France*. at paras 25 and 27.
107 *Bulgakov v. Ukraine*. at paras. 46 and 47.
108 See, e.g. Rainbow application para. IV(29-30).
In Article 8 name cases, the Court affords the State a wide margin of appreciation in making its determination about the validity of a name registration request.\(^\text{109}\) The doctrine mandating a wide margin of appreciation to the State rests on the presumption that national authorities, because of their direct and continuous contact with the decision-making bodies of their country, are in a better position to make the initial assessment in the case. Hence, the Court in Bulgakov asserted that the national courts were better placed to “give an opinion on the need for interference in such a sensitive area.”\(^\text{110}\)

However, in Rasmussen v. Denmark, the ECHR enumerated factors that influence the scope of the margin of appreciation, including “the circumstances, the subject matter and its background.”\(^\text{111}\) The circumstance, subject matter, and the background of Mr. [REDACTED]’ case all cast serious doubt on the ability of the Greek government to gauge and adequately address the needs of all people within its borders. Greece’s mistreatment and non-recognition of its Macedonian minority has been extensively documented.\(^\text{112}\) The discrimination to which the Macedonians have been subjected includes bans on the Macedonian language and culture. Macedonian festivals are suppressed, and Macedonians are discouraged from speaking Macedonian in public.\(^\text{113}\) In addition, the Greek government’s policy of non-recognition and forced assimilation pushes the Macedonian culture underground. Given this history of oppression by the Greek government inflicted on the Macedonian minority, Greece should not be afforded a wide margin by the Court.

IV. VIOLATION OF ARTICLE 8 IN CONJUNCTION WITH ARTICLE 14

Article 14 provides:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language,

\(^{109}\) Johansson, para. 29.; see also Sjöerna v. Finland, para. 49.

\(^{110}\) Bulgakov, para. 43(b).


\(^{113}\) Human Rights Watch, Denying Ethnic Identity, at 16, 36-44.
religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.\textsuperscript{114}

In the present case, Mr. Voskopoulos has suffered a violation of Article 14, as the Greek government has discriminated against him based on his identity with the Macedonian minority.\textsuperscript{115} Discrimination occurs when similarly situated persons are treated differently without an objective and reasonable justification. In \textit{Unal Tekeli v. Turkey}, the Court stated that a difference in treatment amounts to a violation when it is “established that other persons in an analogous or relatively similar situation enjoy preferential treatment and that this distinction is discriminatory.”\textsuperscript{116} In addition, discrimination occurs only if the difference in treatment has “no objective and reasonable justification.”\textsuperscript{117} As the Court noted in the \textit{Belgian Linguistics} judgment, such objective and reasonable justification exists if the difference of treatment pursues:

\begin{quote}
‘a legitimate aim’ and if there is a ‘[…] reasonable relationship of proportionality between the means employed and the aim sought to be realized.’\textsuperscript{118}
\end{quote}

The purpose of this provision is to safeguard ‘individuals, placed in similar situations, from any discrimination in the enjoyment of rights and freedoms under the Convention.\textsuperscript{119}

The Court has specifically addressed discrimination in laws and regulations on names. In \textit{Burghartz v. Switzerland}, where the applicant claimed that he had suffered a violation of Article 14 in conjunction with Article 8 based on his gender, as a woman was allowed to retain her maiden names or adopt her husband’s surname, but a man could not adopt the maiden name of his wife, the Court found that the discriminatory practice was solely, and impermissibly, based

\begin{footnotesize}
\textsuperscript{115} As noted in the Background section of this memorandum, Greece denies that the Macedonians are in fact a national minority. This denial, itself evidence of Greece’s discriminatory attitude, should not preclude the application of Article 14 to Mr. Voskopoulou’s case.
\textsuperscript{116} \textit{Unal Tekeli v. Turkey}. para. 49
\textsuperscript{117} \textit{Id}. at para. 50.
\textsuperscript{118} \textit{Belgian Linguistics} Case, judgment of 23 July 1968, Nos. 1474/62, 1691/62, 1769/63, 1994/63, 21/26/64, 1677/62, Sec. 1B, para. 10
\textsuperscript{119} \textit{Inze v. Australia}, judgment of 28 October 1987, Series A No. 126, p. 18, para. 41.
\end{footnotesize}
on gender.\textsuperscript{120} Similarly, in \textit{Unal Tekeli v. Turkey}, where the State refused to allow the applicant to use her maiden name in place of her married name, the Court held that the distinction in treatment between married men and married women violated Article 14 in conjunction with Article 8.\textsuperscript{121}

This case presents a similar situation in which impermissible legal obstacles have been created to changing one’s name. The assertion by the Greek authorities that allowing the registration and use of Macedonian names would cause confusion is being used as a pretext for discrimination against Macedonians. Macedonian names were forcibly changed to Greek ones in the 1930s.\textsuperscript{122} This government-sponsored program of forcible assimilation— a tactic disfavored under international law— and the consequent lack of Macedonian names in the registers, indicates not that Macedonian names are confusing or unknown in Greece, but that extra measures are required to undo decades of discrimination. Macedonian language and names are an integral part of the northern Greek culture and should be included in any protective measures intended to preserve that culture. However, the Greek authorities’ failure to offer any sort of accommodation to Mr. \underline{[redacted]} is further proof that discrimination against the Macedonians, not true linguistic difficulty or authority confusion, is the core reason for Greece’s refusal to register Mr. \underline{[redacted]}’ name.

A. The Interference with Article 8 in Conjunction with Article 14 is Not Justified

Under the jurisprudence of the Court, a distinction in the enjoyment of a right, such as the Article 8 right to private and family life, must be justified by a legitimate aim and “necessary to a democratic society.”\textsuperscript{123} In the present case, the discrimination suffered by the applicant does not satisfy these requirements and is therefore in violation of the European Convention.

In considering the margin of appreciation granted to States to justify distinctions, the Court held in \textit{Vann Raalte v. Netherlands} that “very weighty reasons must be put forward before a difference of treatment on the sole ground of sex could be regarded as compatible under the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{120} Burghartz \textit{v. Switzerland}, at paras. 28 and 29.
\item \textsuperscript{121} \textit{Unal Tekeli}, para. 68.
\item \textsuperscript{122} See Letter from Ministry of the Interior of Greece, in reply to Mrs. Voskopoulos’ protestations to the Prefect’s decision.
\item \textsuperscript{123} \textit{Darby v. Sweden}, judgment of 23 October 1990, Series A No. 187, para. 31.
\end{itemize}
\end{footnotesize}
Convention.” 124 Similarly, as the European Commission recognized in the East African Asians case, “special importance should be attached to discrimination based on race.” 125

The high threshold required by the Court for the justification of racial discrimination, indicates that the Court should consider the historical oppression of the Macedonians in Greece in this case as it did in Sidiropoulos. 126 In light of Greece’s past and present discriminatory treatment of Macedonians, any Greek law that has the purpose or effect of racial discrimination against Macedonians cannot be justified.

The Court has recognized that the preservation of a national language can qualify as a legitimate aim under certain circumstances, namely when a language is severely threatened or in danger of becoming extinct. 127 Unlike countries such as Latvia, Estonia and Ireland, which have been struggling to revive their language, culture and economy after years of oppression, there is no evidence of a need to protect the Greek language. Rather, the Macedonian language and culture that have been suppressed in Greece and are in need of protection. 128

Laws prohibiting the registration of Macedonian, or “foreign,” names are illegitimate interferences with the rights defined under Article 8 and Article 14 of the Convention. This is particularly true where these laws are merely an insidious continuation of the discriminatory regime, and meant to hinder Macedonians, such as the applicant, who had Greek names forced on them in the past, from seeking the remedy of registering their familial Macedonian names.

B. The Discrimination is Not “Necessary to a Democratic Society”

Even if the Greek government can argue that its refusal to register Macedonian names is justified by a legitimate aim, that aim must be assessed for proportionality. The Court has held that “a justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic

126 Sidiropoulos, at para. 44.
127 Mentzen v. Latvia, p. 19.
128 Denying Ethnic Identity, p. 16 et seq.
Additionally, the Court has required a “reasonable relationship of proportionality between the means employed and the aim sought to be realized.”

In determining whether a particular governmental measure is in proportion to its aim, the ECHR has considered relevant the “legal and factual features which characterize the life of the society in the state which is to answer for the measure in dispute.” In this case, the Court must take into account the Greek government’s repeated denial of the existence of a Macedonian minority, its systematic mistreatment of Macedonians, and its attempt to repress the Macedonian language. Refusing to allow individuals like Mr. from registering a name in his own language is a disproportionate infringement of his rights. Unlike in Mentzen, the Greek Government has made no reasonable attempts to accommodate Mr. Instead, by entirely preventing the applicant from using his Macedonian name, even in conjunction with his Greek name, Greece is perpetuating the discriminatory policies toward Macedonians that existed throughout its history, and failing to respect the applicant’s identity as a Macedonian living in Greece. The objective of the Greek government is therefore not accomplished by proportionate means and is subject to the Article 14 prohibition on discrimination. Denying the applicant the right to change his name like all other non-Macedonian citizens of Greece, is not only unnecessary to a democratic society, it is a continuation of the Greek government’s mistreatment of its Macedonian minority. As the Court stated in Gorzelik v. Poland, “respect for [minorities] is a condition sine qua non for a democratic society.” Greece’s traditions cannot interfere with current minority rights and the Court should not uphold the Greek government’s long history of denying the Macedonians their culture and their minority identity.

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129 Belgian Linguistics Case, Sec. 1B, para. 10.
130 Id.
131 Id.
132 Mentzen v. Latvia, p. 30. (The Latvian government phonetically translated the applicant’s name into Latvian on her passport, but also listed her name with its usual spelling.).
134 Burghartz v. Switzerland, para. 28.