

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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Meeting: 1318th meeting (June 2018) (DH)

Communication from the Cypriot authorities (29/05/2018) concerning the case of CYPRUS v. Turkey (Application No. 25781/94)

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Réunion : 1318^e réunion (juin 2018) (DH)

Communication des autorités chypriotes (29/05/2018) concernant l'affaire CHYPRE c. Turquie (requête n° 25781/94) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

CYPRUS v TURKEY
No. 25781/94

MISSING PERSONS
PAYMENT OF JUST SATISFACTION

1318th CM(DH) MEETING, June 2018
MEMORANDUM
BY THE REPUBLIC OF CYPRUS



INTRODUCTION

1. The Republic of Cyprus remains grateful to the CM(DH) for its continued attention to the execution of the judgment in *Cyprus v Turkey* in relation to the missing persons, most recently at the 1294th meeting of September 2017.
2. Despite the humanitarian dimension of the issue under consideration, 17 years have elapsed since the Court's main judgment, and even under pressure from the CM(DH), only limited progress has been made. As things stand today:
 - a. Turkey has yet to abide fully by the Court's main judgment in a series of important respects, as will be detailed below. The anguish and suffering of the families of the missing persons is thereby unjustifiably prolonged.
 - b. Turkey's protestations of good faith must be measured against its continued and unexplained failure to pay the just satisfaction ordered by the Court in its judgment of 2014.
3. The Decisions taken by the Deputies, most recently in September 2017 (1294th meeting),¹ highlight the following elements of Turkey's non-compliance:
 - a. The urgent need, due to the passage of time, for *a proactive approach to providing the Committee on Missing Persons in Cyprus ('CMP') with all necessary assistance*, particularly by means of:
 - i. giving *unhindered access* to all possible burial sites located in military zones in the occupied areas of Cyprus, and

¹ CM/Del/Dec(2017)1294/H46-30.

- ii. providing the CMP *proprio motu* with any *information* from the relevant archives, including military archives, in their possession on burial sites and any other places where remains might be found.
 - b. The need to ensure that the *investigations conducted by the 'Missing Persons Unit'* are effective and rapidly finalised, and to transmit to the CM(DH) information relevant to the progress of these investigations, including on the content of the conclusions reached in the final reports in investigations finalised so far.
 - c. Firm insistence on the unconditional obligation to pay the *just satisfaction* awarded by the Court in its 2014 judgment of and a reiteration of the call to pay those sums without further delay.
4. Non-compliance has therefore been noted with all three elements of Turkey's obligations: to assist fully and proactively the CMP, to conduct effective investigations, and to pay the just satisfaction ordered by the Court in its 2014 judgment.
5. Similar conclusions were reached by the Deputies in previous meetings, e.g. of March 2016, 1250th meeting², and December 2016, 1273rd meeting.³

PRO-ACTIVE ASSISTANCE TO THE CMP

6. Under its restricted mandate, the CMP's task is to locate and identify the remains of the missing persons, not to uncover the facts surrounding deaths and disappearances, or to hold individuals to account for them. Accordingly, as the Court emphasised in its 2001 judgment at §135,⁴ not even a perfectly-functioning CMP would be capable of meeting the standard of an effective investigation required by Article 2 of the Convention.

² CM/Del/Dec(2016)1250/H46-26.

³ CM/Del/Dec(2016)1273/H46-29.

⁴ "135. [...] the respondent State's procedural obligation at issue cannot be discharged through its contribution to the investigatory work of the CMP. Like the Commission, the Court notes that, although the CMP's procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention, especially in view of the narrow scope of that body's investigations."

7. The significant decrease in the number of individuals exhumed per year since 2011, and the decline in the percentage of successful excavations during the past few years, demonstrates that the CMP is struggling even to discharge its own narrow responsibilities. Its current strategy refers to the pressure of time, notes that relatives are still "*desperately waiting for information on the fate of their missing*", and proposes a range of measures and steps to locate new burial sites and accelerate its current rate of delivery.⁵ The main problems it faces are lack of access to crucial information, the relocation of remains, and a denial of access to military zones. Accordingly, the Deputies have repeatedly emphasised that the proactive assistance which Turkey is under an obligation to provide to the CMP, and which is essential to that body's efficacy, requires, *inter alia*:

- a. unhindered access to all military zones;
- b. identification and provision to the CMP of any relevant information, including from military archives, on burial sites (and their relocation);
- c. active steps to safeguard the protection of those sites.

Unfortunately, Turkey has been deficient in all these respects.

Access to military zones

8. A substantial part of the territory under the effective control of Turkish troops in the occupied areas is still designated as military zones. Access to them, as well to adjacent areas, was for decades prohibited by Turkey. Accordingly, the Republic of Cyprus has long demanded before the CM(DH) that Turkey should allow immediate and unhindered access to the CMP to military zones in the occupied areas. After intensive pressure by the CM(DH) in recent years, Turkey finally proceeded to partially alter its original position. In this connection, at the 1294th meeting in September 2017, the Deputies "*noted with interest the information submitted by Turkish the authorities...on the authorization given to the CMP in 2017 to proceed with excavations in an eleventh military zone...*". However, they also unequivocally "*called upon the Turkish authorities*

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Committee on Missing Persons in Cyprus, *Strategy 2017-2020*, Executive Summary.

*to give unhindered access to all possible military zones located in the northern part of Cyprus...".*⁶

9. Nevertheless, such unhindered access continues to be withheld. Turkey's piecemeal approach to granting access to military zones in the occupied areas, which are closely and unduly monitored by representatives of Turkish troops, continues to be a struggle for the CMP and a significant hindrance to its work. Furthermore, excavation works conducted by the CMP in 2018 in military areas to which access was eventually granted pursuant to pressure by the Committee, have been repeatedly interrupted by Turkish military forces. This has been the case especially in the area designated as a military zone at Dikomo.
10. Unacceptably, despite the obstacles to the work of the CMP outlined above, and despite repeated calls by the Deputies, Turkey has, without reasonable explanation, failed to date to unconditionally provide immediate and unhindered access to all military zones in the occupied areas.

Access to information

11. Access to information remains another crucial factor determining the success rate of the CMP's work and the efficient use of its resources. At the 1294th meeting in September 2017, Turkey claimed that it was reviewing its archives for additional information on the location of burial sites of missing persons, on the request of the CMP. In this connection, at the same meeting, the Deputies once again called upon the Turkish authorities to provide the CMP "*proprio motu with any information from the relevant archives, including military archives, in their possession on burial sites, and any other places where remains might be found.*"⁷
12. However, no such information has been forthcoming. Given that in the last two years, there has been a dramatic drop in the recovery of remains of missing persons by the CMP, with only 49 individuals recovered in 2017 and only 8 so far in 2018, it is evident that it is absolutely vital, now more than ever, for Turkey to provide information on burial locations. Such information can be secured either from written records found in military archives or from personal testimonies of the military or auxiliary personnel who

⁶ CM/Del/Dec(2017)1294/H46-30.

⁷ CM/Del/Dec(2017)1294/H46-30.

participated in the military invasion of Cyprus by Turkey in 1974, in relation to which personnel the CMP has no capacity to undertake full investigations under its restricted mandate. Vital Information that must also be provided by Turkey, but that has been persistently withheld, includes the mass burial locations of bodies that were collected from the battlefields.

13. Only Turkey is in a position to provide the detailed information required, especially from its military archives, on the location of burial sites and the collection of bodies performed under its authority or control. To date, she has fallen short of her obligation to do so.

Protection / safeguarding of burial sites

14. In its "Strategy 2017-2020", the CMP states that:

"A number of the burial sites discovered by the CMP have been found to have been disturbed with remains being transferred to unknown locations. As a result, concerned families receive only residual human remains, or none at all, and continue to await the missing remains for proper burials during years, which adds considerable pain to their ordeal".

15. There can be no doubt that the intentional disturbance of burial sites and exhumation of human remains, determined by the CMP to have occurred in at least four sites in the occupied areas of Cyprus ⁸ and to have been conducted with the use of heavy machinery and in an organized and systematic manner, were deliberate and intended to conceal evidence of a crime. Accordingly, the Republic of Cyprus has in the past insisted upon the fulfilment of Turkey's obligation of to conduct effective investigations in order to determine the persons responsible for such actions. Despite repeated pleas to Turkey, including through various decisions of the CM(DH), to provide information to the CMP of the new locations at which the relocated remains have been deposited, Turkey continues to deny the provision of and/or access to any relevant information.
16. The intentional transfer of remains from their primary burial site, and the ongoing refusal by the Turkish authorities to inform the CMP of the new locations where they have been deposited, leads to unsuccessful excavations and/or augmented costs as

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At Afaneia, Sinta, Ayios Ilarionas and Kornokipos.

more bone samples have to be sent for genetic analysis to laboratories, and thus to a waste of valuable resources and time. Even though the Republic of Cyprus has insisted that Turkey ensures the active protection of known burial locations of missing persons, or even possible burial locations which have been identified, in order to circumvent unwarranted human activities in these areas (for both private and public works), no mechanism to this effect has been put in place to date.

17. All of the above indicate that not only is Turkey inherently unwilling to assist the CMP in determining the fate of missing persons, she is also deliberately prohibiting such work. This becomes all the more evident at burial locations within military zones excavated so far, in many of which it was established that remains were both intentionally disturbed or left unprotected from other activities. In these cases, the recovered remains were in a highly fragmentary and incomplete state. Furthermore, in the vast majority of cases where remains were relocated, no information has been forthcoming from the Turkish authorities on the location to which these were transferred.

INVESTIGATIONS BY THE MPU

18. In paragraph §135 of its 2001 judgment, the Court found that “[...] *the respondent State's procedural obligation at issue cannot be discharged through its contribution to the investigatory work of the CMP*”. Clearly therefore, the existence and activities of the CMP cannot be relied upon as discharging in any way Turkey's distinct obligation under Article 2 of the Convention to determine the fate of the missing persons or the facts surrounding the deaths of those who have been identified, and to hold any perpetrators of unlawful violence to account in a criminal prosecution. The point made in the same paragraph that the CMP's procedures “*are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 of the Convention*”, was elaborated by the Court in *Varnava and others v Turkey*⁹ (judgment of 18 September 2009), as follows:

“§192. The Court finds no indication that the CMP is going beyond its limited terms of reference to play any role in determining the facts surrounding the deaths of the missing persons who have been identified or in collecting or assessing evidence with a view to holding any perpetrators of unlawful violence to account in a criminal prosecution. Nor is any other body or authority taking on

⁹ Applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90).

that role. It may be that investigations would prove inconclusive, or insufficient evidence would be available. However, that outcome is not inevitable even at this late stage and the respondent Government cannot be absolved from making the requisite efforts."

19. During past discussions under this cluster, Turkey submitted to the CM(DH) various data as to the number of cases handled by the "Missing Persons Unit" and investigations that are either pending or concluded. The Deputies at the 1294th meeting of September 2017 requested updated information on the progress made in investigations conducted by the 'MPU'. However, no such information has been received. Equally, the CM(DH) has seen no information on the content of the final conclusions reached in investigations finalised so far.
20. In consequence, the Committee is still not aware of even a single case having led to any prosecution proceedings. This is manifestly unsatisfactory. It is in any case, doubtful whether a small unit of the size of the MPU can effectively manage its caseload, or exercise the level of thoroughness and diligence that is reasonably expected in police investigations. It therefore continues to be the case that, to date, Turkey has not illustrated a genuine and *bona fide* approach to the conduct of investigations.

JUST SATISFACTION

21. In its just satisfaction judgment of 12 May 2014, the Court ordered Turkey to pay 30 million euro in respect of non-pecuniary damage suffered by the surviving relatives of the missing persons, and 60 million euro in respect of non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas Peninsula. To date, Turkey has wrongfully failed to pay those amounts. Since 2014, no indication of the date of payment has been given during proceedings before the CM(DH).
22. The Court's just satisfaction judgment was described in the concurring opinion of Judge Pinto de Albuquerque, joined by Judge Vučinić, as "*the most important contribution to peace in Europe in the history of the European Court of Human Rights*". They expressed the logic of the Court's judgment in the following words:

"The message to member States of the Council of Europe is clear: those member States that wage war, invade or support foreign armed intervention in other

member States must pay for their unlawful actions and the consequences of their actions, and the victims, their families and the States of which they are nationals have a vested and enforceable right to be duly and fully compensated by the responsible warring State. War and its tragic consequences are no longer tolerable in Europe and member States that do not comply with this principle must be made judicially accountable for their actions, without prejudice to additional political consequences."

23. That passage demonstrates not only the exceptional significance of the judgment, but the gravity of Turkey's failure to respond in any way to the binding obligation placed on it by the Grand Chamber of the Court.
24. The Court emphasised that "*if just satisfaction is ordered in an inter-State case, it should always be done for the benefit of individual victims*" (§46, emphasis added). As in previous meetings, the Republic of Cyprus once again reiterates that it is fully committed to ensuring that individual victims will be the sole beneficiaries of the just satisfaction once it has been paid. The supervision of the Committee of Ministers, referred to in the just satisfaction judgment, provides any additional reassurance that may reasonably be required.
25. Turkey's continued failure to pay the just satisfaction that has been ordered, several years after it fell due, demonstrates its flagrant disregard for the individual victims that it was intended to compensate. The more time that goes by, the older those uncompensated victims become, and the less benefit they will be able to derive from such compensation as may eventually be paid.
26. More profound still – as the above passage demonstrates – are the consequences of Turkey's failure for the core mission of the Court and of the Convention system. By failing to comply with a judgment of such exceptional significance, Turkey threatens the effectiveness of the Convention system as a promoter of peace and a guardian of democracy and the rule of law.
27. Turkey should therefore, as a bare minimum:
 - a. explain why it has failed to comply with the Court's order to date (though self-evidently, no explanation could constitute an excuse); and

- b. make in advance of the 1318th meeting immediate payment, with interest, of the just satisfaction that has been ordered.

28. In the event that payment has still not been made by the time of the 1318th meeting, the Deputies will be invited to instruct the Secretariat to draft an interim resolution to this effect, and to draw the necessary conclusions regarding Turkey's willingness to comply in good faith with its obligations to the missing persons.

CONCLUSIONS

29. For the reasons stated above, and in the absence of any steps taken by Turkey in advance of the 1318th meeting to meet its obligations, the Republic of Cyprus requests that the Deputies call upon Turkey to:

- a. provide immediate and unhindered access to all military zones;
- b. provide full information from reports and military archives in its possession containing information on burial sites, including relocated remains, and information originating from the period of the clearing of battlefields;
- c. take concrete positive measures to avert any future relocation of remains and disturbance of burial sites;
- d. adopt a genuine and proactive approach in the investigation of the fate, whereabouts and circumstances of the disappearance of all missing persons; and
- e. immediately pay, with interest, the amount awarded by the Court in its judgment on just satisfaction of 12 May 2014.