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Meeting: 1406th meeting (June 2021) (DH)

Communication from the Cypriot authorities (31/05/2021) concerning the KAKOULLI and ISAAK groups of cases v. Turkey (Applications No. 38595/97, 44587/98)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1406^e réunion (juin 2021) (DH)

Communication des autorités chypriotes (31/05/2021) relative aux groupes d'affaires KAKOULLI et ISAAK c. Turquie (requêtes n° 38595/97, 44587/98) **[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.



REPUBLIC OF CYPRUS
PERMANENT REPRESENTATION TO THE COUNCIL OF EUROPE

Ref. No.: 24.24.18.039, 24.24.18.047
Encl: 8 pages



31 May 2021

Ms Clare OVEY
Head of Department
Department of Execution of Judgements
of the European Court of Human Rights
Directorate General of Human Rights and Rule of Law

Dear Ms Ovey,

In view of the discussion of the cases of KAKOULLI v. Turkey (Application No. 38595/97) and ISAAK v. Turkey (Application No. 44587/98), during the 1406 CM (DH) meeting, please find enclosed herein a Memorandum on behalf of the Government of the Republic of Cyprus.

Please accept, Ms Ovey, the assurances of my highest consideration.

Kind regards,

A handwritten signature in black ink, appearing to read 'Kostas Psevdiotis'.

Kostas Psevdiotis
for Permanent Representative

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***Kakoulli v Turkey*, Application no. 38595/97, 22.11.05
Andreou v Turkey, Application no. 43653/99, 27.10.09
Panayi v Turkey, Application no. 45388/99, 27.10.09
(the Kakoulli group of cases)**

***Isaak v Turkey*, Application no. 44587/98, 24.06.08
Solomou and others v Turkey, Application no. 36832/97, 24.06.08
(the Isaak group of cases)**

1406th CM(DH) MEETING, 7-9 JUNE 2021

MEMORANDUM OF THE REPUBLIC OF CYPRUS

INTRODUCTION

1. Each of these five cases concerns the infliction of fatal (or in the case of *Andreou*, life-threatening) violence on Greek Cypriots in 1996, in the vicinity of the UN buffer zone in Cyprus. The Court concluded (taking the incidents in chronological order) that:
 - a. Stelios Kalli Panayi was shot dead on 3 June 1996 by Turkish soldiers after entering the UN buffer zone.
 - b. Anastasios Isaak was beaten to death in the UN buffer zone on 11 August 1996 by a group which included members of the Turkish forces.
 - c. Solomos Solomou was shot dead by agents of Turkey on 14 August 1996, having attended the funeral of Anastasios Isaak, when he crossed the ceasefire line and started to climb a flagpole.
 - d. Georgia Andreou, who had also attended the funeral of Anastasios Isaak, was shot and injured by Turkish soldiers on the same day.
 - e. Petros Kyriakou Kakoulli was shot dead on 13 October 1996 by a Turkish soldier on guard duty along the ceasefire lines.
2. The judgments of the Court, which were delivered between November 2005 and October 2009 and became final three months later, found substantive violations of Article 2 in all cases, and procedural violations of Article 2 (failure to carry out an effective criminal investigation into the circumstances surrounding the deaths) in each of the four cases in which deaths occurred (that is, except in *Andreou*).
3. Various CM(DH) decisions were taken between 2007 and 2010, subsequent to which the cases remained under supervision. Following a decision to re-examine the cases at the 1406th CM(DH) Meeting in June 2021, Turkey submitted two Action Reports under cover of a letter of 22 March 2021, one for the Kakoulli group (*Kakoulli*, *Andreou* and *Panayi*) and one for the Isaak group (*Isaak* and *Solomou*). In both Action Reports, Turkey claims that no further individual measures or general measures are required in these cases.

4. This Memorandum responds to both Action Reports. Cyprus considers that in none of the cases in which deaths occurred has Turkey complied with the Court's judgments by carrying out effective investigations into the circumstances of the killings.

KAKOULLI

5. Turkey's claim that it is unable to progress the investigation into the killing of Kakoulli is wholly unfounded. Petros Kakoulli strayed into the Turkish-occupied area where he was shot. The extensive evidence in the case was summarised in paras 36-73 of the judgment of the Court. From that evidence alone, there can be no doubt that the fatal injuries to Mr Kakoulli were caused by an Officer of Turkish Armed Forces, namely the Infantry Private Harun Avşar, who in his own statement to the investigating authorities, reproduced at para 72 of the judgment of the Court, admitted firing shots directly at Mr Kakoulli.

6. The Court found at para 117 that:

“private Avşar fired two or three shots with his gun, aimed directly at the victim, and that the last shot caused the victim's death”.

It concluded at para 120 that:

“the soldier in question had recourse to lethal force where there was no imminent risk of death or serious harm to him or other persons”,

and at para 121 that:

“the use of force against Petros Kakoulli was neither proportionate nor absolutely necessary for the purpose of ‘defending any person from unlawful violence’ or ‘effecting a lawful arrest’”.

7. Having pointed out the many deficiencies in the investigation conducted by the “TRNC” “authorities” into the killing of Petros Kakoulli (paras 122-127), the Court found that the investigation was “neither effective nor impartial” (para 128). The conclusion of the investigation – that “this was a justified killing since Private Harun Avşar had done what his duty dictated” (para 70), and the consequent decision to classify the case as “no case” and to initiate no criminal or disciplinary proceedings against Harun Avşar (para 124) were therefore plainly deficient.
8. Cyprus recalls that in the Assessment of the Secretariat for the March 2010 CM(DH) (1078th) Meeting:

“In its initial assessment the Committee of Ministers indicated that the conclusion of the Prosecutor General in 2007 not to carry out a new investigation into Mr Kakoulli's killing was based on the same investigation acts as those criticised by the European Court, giving rise to a violation of the procedural aspect of Article 2. However, it was considered that since the Turkish authorities appeared not to be in a position to carry out a new autopsy it seemed impossible to take action effectively to remedy the

deficiencies of the initial investigation as concluded by the European Court. Following the Cypriot authorities' proposal to exhume the body, the absence of a new autopsy can no longer be relied on as an objective obstacle for conducting a new investigation. This being the case, the other reasons adduced by the Prosecutor General in his decision of 2007 for not performing a new investigation, do not appear to be sufficient to justify the lack of further action to remedy the shortcomings of the initial investigation identified by the judgment. In these circumstances, a fresh assessment by the competent Turkish authority of the possibility of conducting a new investigation seems necessary."

9. In the Decision taken thereafter at the March 2010 (1078th) CM(DH) meeting, the Deputies found that the grounds advanced by Turkey for stating that a new investigation was impossible

"do not seem sufficient to justify the absence of a new investigation".

Furthermore, noting that the Cypriot authorities had indicated that it would be possible to carry out a further forensic examination of Mr Kakoulli's body, the Deputies

"considered that, in these circumstances, it is for the competent Turkish authorities to reassess the possibility of carrying out a new investigation into the death of Mr Kakoulli and invited them to submit information in that respect".¹

10. In its Action Report of March 2021, Turkey states that "the Attorney-General's Office on 26 March 2010 conducted another assessment of the possibility of carrying out a further investigation into Mr Kakoulli's death". That assessment is said to have concluded that "even if a new autopsy were possible, there could be no further investigation in the absence of *inter alia* new evidence to move the case forward". Turkey claims that information which had been shared with the Secretariat on 11 June 2010 (i.e. some 11 years ago) "has been under assessment", but provides no details of the information or the nature and timescale of its assessment.
11. In light of all of the above, and in particular in light of the circumstances found by the Court and summarised above, Turkey's response for this Meeting is submitted to be plainly inadequate. Moreover, what appears to be a deliberate delay on behalf of the respondent state to conduct an effective investigation, cannot be relied upon for its own benefit, that is, to relinquish itself from its continuing obligation to conduct an effective investigation. In the absence of a satisfactory explanation from Turkey, Cyprus invites the Deputies to conclude that:
 - a. There has been no effective investigation into the circumstances of the death of Petros Kakoulli, despite there being ample evidence before the Court indicating the guilt of the soldier who admits shooting him.
 - b. The information provided in the March 2021 Action Report provides no basis on which it could be concluded that such an investigation has taken place.

¹ CM/Del/Dec(2010)1078.

- c. Turkey has accordingly failed to comply with the judgment of the Court.

PANAYI

12. Stelios Kalli Panayi was a 19-year-old private soldier in the Cyprus National Guard who, alone and unarmed (Judgment, paras 60-61), entered the UN buffer zone in Nicosia early in the morning of 3 June 1996. Turkey accepted that he was shot there, intentionally, by a Turkish soldier on duty at a sentry post (Judgment, para 58). The UN Secretary-General reported, and the Court accepted (Judgment, paras 65-66) that an attempted humanitarian intervention by UNFICYP soldiers was then hampered by Turkish soldiers firing live shots in their direction.
13. The Court unequivocally and without hesitation found that the “authorities” failed to carry out an effective criminal investigation into the circumstances surrounding Mr Panayi’s death. The “authorities” confined themselves to producing a few notes emanating from the military authorities and describing events on the basis of the versions given by the soldiers involved. Those versions did not appear to have been challenged in the light of the material evidence available to the “TRNC” “authorities”, or of the statements of UN personnel. There was no independent investigation (Judgment, paras 71-73).
14. Things appear not to have advanced, in material respects, since then. In its Action Report of March 2021, Turkey states in relation to individual measures, only that:

“The subsequent investigation of the place of the incident and of the relevant personnel revealed that the Greek Cypriot National Guard soldier Panayi who crossed into the TRNC territory and who was deemed to be carrying an assault weapon which could have posed a risk to the guards, was warned and then shot in accordance with the existing orders, instructions and rules of engagement”.
15. This position is, once again, manifestly inadequate. In the absence of a satisfactory explanation from Turkey, Cyprus invites the Deputies to conclude that:
 - a. There has been no effective investigation into the circumstances of the death of Stelios Kalli Panayi.
 - b. The information provided in the March 2021 Action Report provides no basis on which it could be concluded that such an investigation has taken place.
 - c. Turkey has accordingly failed to comply with the judgment of the Court.

ISAAK

16. Anastasios Isaak participated on 11 August 1996 in a demonstration against the Turkish occupation, organised by the Cyprus Motorcycle Federation, at the UN buffer zone east of Nicosia (Judgment, para 9). Mr Isaak was one of a group of demonstrators who crossed the ceasefire line on foot, where they were attacked by counter-demonstrators. The Court accepted, on the basis of ample evidence, *inter alia* evidence of UNFICYP witnesses,

photographic evidence and video footage, that Mr Isaak, who according to the photographic evidence was unarmed (Judgment, para 118) was surrounded by a group of at least 15 persons, thrown to the ground and brutally beaten with various implements for several minutes. At least four uniformed soldiers belonging to the Turkish forces “actively participated in the mob”, and were photographed beating Mr Isaak with metal batons (Judgment, paras 112, 119), without making any attempt to apprehend him or save his life. The Court accordingly found that Isaak was killed by, and/or with the tacit agreement of, agents of the respondent State, and that the use of force was not justified (Judgment, para 120).

17. Turkey failed to produce any evidence to the Court showing that an investigation had been carried out into the circumstances of Mr Isaak’s death, or that those responsible had been identified and arraigned before a domestic tribunal in the ensuing period of more than 11 years. This is notwithstanding the fact that, as the Court found, “the photographic evidence of the actual beating and killing ... could have enabled the local authorities to identify the persons involved in it” (Judgment, para 124). The Court accordingly found that there was a failure to carry out an effective criminal investigation into the circumstances surrounding Mr Isaak’s death (Judgment, para 125).
18. The CM(DH) noted in March 2010 that no information had been provided on the individual measures required.²
19. In its March 2021 Action Report, Turkey states in relation to the Isaak and Solomou cases, that:

“Following the said judgments, the TRNC Attorney General’s Office reviewed the files into the deaths of the abovementioned persons in light of the findings of the European Court of Human Rights.

After the new investigation, the Attorney General’s office in a decision of 29 March 2011 confirmed their previous finding that the officers in charge had acted in line with the legislation governing the use of fire-arms at the relevant time, that is Police Force (Establishment, Duties and Powers) Law, Law No. 51/1984, and in particular section 88(2) of the said Law. By this decision, the Attorney General’s Office affirmed its former decision that the acts of the officers in question had not constituted a criminal offence within the meaning of the Criminal Code, as they had acted in compliance with the legal framework applicable at the relevant time.”

20. No familiarity with the so-called “law” of the “TRNC” is necessary in order to appreciate the absurdity of this account. Turkey appears to maintain that it was not contrary to that “law” for agents of the State actively to participate in the fatal beating of an unarmed demonstrator who had been thrown to the ground and brutally attacked by a large mob. Even if its domestic “law” had fallen so far below the standards of any civilised nation, this could not absolve Turkey from its duty to comply with the procedural aspect of Article 2 ECHR.

² CM/Del/Dec(2010)1078.

21. The superficial nature of Turkey's assertion is further demonstrated by the reference to "legislation governing the use of fire-arms". No fire-arms were used against Mr Isaak: the Court found that he was beaten to death with sticks and metal batons. It would appear therefore that the so-called "new investigation" of 2011 (of which no evidence has been produced) was so formalistic and superficial as to have been conducted, possibly purposely, without any regard to the facts of the case.
22. It also appears from the Action Report that because Turkey considers there to have been no breach of "TRNC law", it has made no attempt to identify the persons involved in the beating, notwithstanding the Court's finding that the photographic evidence could have enabled them to do so (and in Cyprus's position, still can). Nothing whatsoever seems to have been done since March 2011.
23. The finding of the Court that (a) the respondent state failed to produce any evidence showing that an investigation had been carried out into the killing, (b) an alleged inquiry had been pending since 1996 without achieving any substantial result (i.e. identification of the persons involved in the beating) and (c) no documents had been provided to the Court concerning the alleged inquiry, cannot be simply remedied by reviewing this alleged "inquiry" and apparently reaching the same conclusion. A new criminal investigation should have been lodged following the Court's judgment. There is ample evidence, which indeed forms part of the Court's file, which the respondent state could have used for a start (and indeed can still use) in order to lodge its own criminal investigation.
24. In this regard, Cyprus adds that eight persons suspected to be involved in the killing of Isaak are considered wanted persons by INTERPOL. Indeed, for three of those persons, INTERPOL Red Notices have been issued and are still active in connection with the case. Alarming, one of those persons, Erhan Arikli, is currently serving as so called "Deputy Prime Minister" and "Minister of Finance and Energy" of the illegal occupation regime. Moreover, for five of the eight persons referred to above, INTERPOL Diffusion Alerts have been issued and are also active in connection with the case.
25. The position is, once again, manifestly unsatisfactory. In the absence of a satisfactory explanation from Turkey, Cyprus invites the Deputies to conclude that:
 - a. 13 years following the Court's judgement, there has still been no effective investigation into the circumstances of the death of Anastasios Isaak.
 - b. The information provided in the March 2021 Action Report provides no basis on which it could be concluded that such an investigation has taken place.
 - c. Turkey has accordingly failed to comply with the judgment of the Court.

SOLOMOU

26. Solomos Solomou attended the funeral of Anastasios Isaak on 14 August 1996. Afterwards, alone and unarmed, he crossed the ceasefire line and started to climb a flagpole by a Turkish sentry box. According to the evidence of UNFICYP personnel, which was confirmed by

photographs and video film, he was shot five times by two men in Turkish military uniforms and a man in civilian clothes on the balcony of the Turkish observation post. The Court found that Mr Solomou was killed by agents of the respondent State and that the use of force was not justified (Judgment, paras 69-79).

27. As in the case of Isaak, the Court found that Turkey had neither produced any evidence showing that an investigation had been carried out into the circumstances of Mr Solomou's death, nor alleged that, more than 11 years after the incident, those responsible for the killing had been identified and arraigned before a domestic tribunal. Accordingly, it found that the authorities failed to carry out an effective criminal investigation into the circumstances surrounding the death (Judgment, paras 82-83).
28. The CM(DH) noted in March 2010, as in the case of Isaak, that no information had been provided on the individual measures required.³
29. Turkey's March 2021 Action Report dealt with the cases of Isaak and Solomou in the same passage (see para 19, above). Cyprus's positions at para 20 above apply equally to this case; the so-called "new investigation" of 2011 was plainly inadequate. Indeed, like in the case of Isaak, two persons suspected to be involved in the killing of Solomou are considered wanted persons by INTERPOL, and in this regard, INTERPOL Red Notices have been issued and are active in connection with the case. These two Red Notices concern Kenan Akin, who served as so-called "Minister for Agriculture" of the illegal occupation regime and thereafter as so called "MP" in the TRNC "Parliament" (he also ran in the 2018 "parliamentary elections"), and Erdal Hatjiali Emanet, who in 1996 served as Commander of the so called "Special Forces" branch of the "Police", and who continued to serve as a high ranking Officer in the "Police" of the illegal occupation regime until his retirement in July 2012. The above equally underlines the utter inadequacy of Turkey's response.
30. Accordingly, in the absence of a satisfactory explanation from Turkey, Cyprus invites the Deputies to conclude that:
 - a. 13 years following the Court's judgement, there has still been no effective investigation into the circumstances of the death of Solomos Solomou.
 - b. The information provided in the March 2021 Action Report provides no basis on which it could be concluded that such an investigation has taken place.
 - c. Turkey has accordingly failed to comply with the judgment of the Court.

ANDREOU

31. While the procedural limb of Article 2 was not in issue before the Court in the *Andreou* case, in view of the obligation of the respondent State to provide *restitutio in integrum* for violations of the right to life, and also bearing in mind that the facts in this case concern the

³ CM/Del/Dec(2010)1078.

infliction of life threatening injury to the applicant as a result of indiscriminate shooting by soldiers, an investigation into these circumstances is also necessary.

CONCLUSIONS

32. In none of the cases considered in this Memorandum has Turkey conducted effective investigations into deaths which the Court has attributed in whole or in part to members of its own security forces. Accordingly, it has failed to comply with the applicable judgments of the Court. Its continuing obligation to do so still remains, and in this regard, it should take action to conduct effective investigations in fulfilment of this obligation, immediately and/or without further delay.