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Date: 16/01/2025

DH-DD(2025)59

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Meeting: 1521st meeting (March 2025) (DH)

Communication from the applicant (14/01/2025) in the case of VARNAVA AND OTHERS v. Turkey (Application No. 16064/90).

Information made available under Rule 9.1 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 : 1521^e réunion (mars 2025) (DH)

Communication du requérant (14/01/2025) relative à l'affaire VARNAVA ET AUTRES c. Turquie (requête n° 16064/90) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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HR4-8/193/EC

14 January 2025

Messrs

Secretariat of the Committee of Ministers

Council of Europe

F-67075 Strasbourg, Cedex

France

VIA EMAIL ONLY

Dear Sirs

Re: Application nos. 16064/90, 16068/90, 16070/90, 16072/90 and 16073/90 Varnava and Others v Turkey, Judgment dated 18 September 2009 ("2009 Judgment")

Thank you for bringing to the attention of the Members of the Committee of Ministers the Applicants' letter dated 7 March 2024 under reference [DH-DD\(2024\)290](#) ("Applicants' Letter") in relation to the 2009 Judgment. Furthermore, the Applicants set out the following under 9 headings:

- (i) Introduction
- (ii) CM(DH) Decision, 14 March 2024
- (iii) Notes on the Agenda, 14 March 2024
- (iv) Respondent's MEMO, 19 December 2024
- (v) Just satisfaction up to 2009
- (vi) Ineffective Individual Measures
- (vii) Formal Notice under Article 46
- (viii) Just satisfaction for 2010-2025
- (ix) Conclusion

(i) Introduction

- (1) These observations relate only to the 15-year failure of the Respondent to pay the just satisfaction awarded and to the absence of effective individual measures for the benefit of the Applicants.
- (2) True to its "a la carte" approach to Human Rights, the Respondent fails to execute the 2009 Judgment and continues to violate the Applicants' rights since 1974.
- (3) To add insult to injury, the Respondent fails to respond to the interim Resolutions and Decisions of the CM(DH) in relation to the Applicants. These failures pose a threat to the credibility of the Convention system and must not be tolerated further.
- (4) Consequently, a formal notice in accordance with Article 46 of the Convention must be served and CM(DH) must proceed to vote to refer the matter to the Court.

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(ii) CM(DH) Decision 14 March 2024

- (5) At the 1492nd meeting, on 12-14 March 2024 (DH), the Deputies, inter alia, decided:

"...3. deplored again the absence of response to Interim Resolution CM/ResDH(2021)201 where the Committee strongly urged the Turkish authorities to abide by their unconditional obligation to pay the sums awarded in the Cyprus v. Turkey judgment of 12 May 2024 and Interim Resolution CM/ResDH(2022)52 concerning the absence of payment of the just satisfaction awarded by the European Court in the Varnava and Others v. Turkey judgment of 18 September 2009, and strongly urged Türkiye to effect the payment of these sums, together with the default interest accrued, without further delay;"

- (6) This Decision is binding on the Respondent.

(iii) Notes on the Agenda, 14 March 2024

- (7) Prior to the above mentioned Decision, the Notes on the Agenda provided in the Analysis of the Secretariat, inter alia, that:

"Analysis of the Secretariat

Payment of the just satisfaction

It should be underlined that the payment of the just satisfaction awarded by the Court in the Varnava case for the moral damage suffered by the relatives of the nine missing men concerned by this judgment is a central measure for the execution of the judgment. In its judgment, the Court noted that these relatives "have endured decades of not knowing, which must have marked them profoundly" and awarded 12,000 Euros for non-pecuniary damage to each of the nine applications. Therefore, the Committee cannot close its supervision of the "substantive part of the individual measures" as it is invited to do by the Turkish authorities (see noted in the Cyprus v. Turke case)."

- (8) Despite the above the Respondent has not only failed to effect the relevant payment todate but has also failed to provide any response either to the above mentioned Interim Resolution or Decision.

(iv) Respondent's MEMO, 19 December 2024

- (9) In fact, on 20 December 2024 the Secretariat distributed the Respondent's MEMO of 19 December 2024 [DH-DD\(2024\)1508](#) which, inter alia, confirms its failure to effect the payment for the just satisfaction awarded in 2009.
- (10) It actually fails to make any relevant reference to the said Decision and Interim Resolution.
- (11) Furthermore, it totally disregards the Applicant's observations circulated on 8 March 2024 [DH-DD\(2024\)290](#).



- (12) The Applicants submit that this deplorable behavior should not pass unnoticed and the fact that the Respondent has failed to rebut the Applicants' submissions, must estop the Respondent from denying or at least objecting to same.
- (13) Nothing that the Respondent has submitted, which is in any event rejected by the Applicants, warrants a departure from the Analysis of the Secretarial which should be upheld.

(v) Just satisfaction up to 2009

- (14) Not only has the Respondent failed to pay the just satisfaction awarded by the 2009 Judgment, it has the audacity to request the closure of the individual measures for the Applicants.
- (15) In fact, in footnote 6 of its MEMO the Respondent claims support from the procedure followed in the case of Loizidou, where the Judgment on just satisfaction was issued in 1998, the relevant payment was effected in 2003 (with only 5 years delay) and the final resolution of CM(DH) was adopted in 2022.
- (16) It should be recalled that the Loizidou Application has not come to an end. The procedure under former Article 32 of the Convention is still pending before the Committee of Ministers.
- (17) How can one possibly allow the consideration of the closure of individual measures when just satisfaction awarded, has not been paid for at least 15 years.
- (18) As already stated on numerous occasions by the Applicants, had this occurred before a Court in Cyprus it would undoubtedly amount to contempt of Court which is exactly what the Respondent is doing to the Applicants' 2009 Judgment, as well as the procedure before CM(DH).

(vi) Ineffective Individual Measures

- (19) It is astonishing to the Applicants, to say the least, that they have to reply to this type of arguments by the Respondent when, it has failed to proceed with the award, together with default interest for the last 15 years.
- (20) The Applicants now turn to the purported individual measures that the Respondent is referring to.
- (21) The Applicants adopt and repeat their submissions in their latest Observations circulated on 8 March 2024 [DH-DD\(2024\)290](#), and previously on 17 January 2024 [DH-DD\(2024\)59](#).
- (22) The ineffectiveness of the Committee of Missing Persons ("CMP") as a Turkish domestic remedy, despite the Respondent's MEMO, is simply Res Judicata, which the Respondent must abide by under Article 46 of the Convention. The Court in the 2009 Judgment stated, inter alia, in para 189:



"1. The Court considers, firstly, that the Grand Chamber in the fourth inter-State case was fully aware of the background and sensitivity of the situation when it found the CMP's procedures did not meet the standard of investigation required by Article 2. As concerns the second strand of argument, it fully acknowledges the importance of the CMP's ongoing exhumations and identifications of remains and gives full credit to the work being done in providing information and returning remains to relatives (see also the Committee of Ministers decision at paragraph 88 above). But important though these measures are as first step in the investigative process, they do not exhaust the obligation under Article 2".

- (23) For the Respondent to claim otherwise in its MEMO, again, amounts to contempt.
- (24) If the Respondent seriously wishes to provide an effective remedy for the Applicants in the areas of Cyprus under its effective control, it should take a position on the Truth Commission already proposed by the NGO Truth Now. This can be seen in, inter alia, its submissions circulated on 24 January 2024 [DH-DD\(2024\)73](#) and 8 February 2021 [DH-DD\(2021\)150](#).

(vii) Formal Notice under Article 46

- (25) The Applicants repeat their request for Formal Notice under Article 46 to be served on the Respondent, in view of its deplorable behavior towards them.
- (26) Their abovementioned Observations, last year, are still appicate since nothing has changed.
- (27) In fact, the continuous violation of the Applicants' rights and the failure of the Respondent to pay the amounts awarded and provide effective individual measures, not only is in flagrant disrespect of the Convection, but also pose a threat to the credibility of the Convention system.
- (28) The CM(DC) Interim Resolution 3 years ago [CM/Res DH\(2022\)52](#), inter alia, states:

"EXPRESSED PROFOUND CONCERN that prolonged delays in fulfilling this obligation not only deprive the individual victims from receiving compensation for the damages suffered by them, but also is in flagrant disrespect with Türkiye's international obligations, both as a High Contracting Party to the Convention and as a member State of Council of Europe"
- (29) As soon as a formal notice is served, in accordance with Article 46, the CM(DH) is respectfully requested to proceed to refer the matter to the Court.

(viii) Just satisfaction 2010-2025

- (30) The failure of the Respondent to pay the just satisfaction awarded 15 years ago carries interest, in accordance with the 2009 Judgment.



- (31) Nevertheless, this does not cover the just satisfaction for the continuing nature of the violation established.
- (32) The violation is continuous, and the Respondent should not be allowed to get away with it.
- (33) Otherwise, the default interest from 2009 onwards would just substitute the damages for the continuing violation, already established.
- (34) Surely this should not be allowed because it rewards the Respondent for the delay in payment and the continuous violation.
- (35) This is one more reason that referral of the matter under Article 46 should be made. It will afford the opportunity to the Court to address the issue and vindicate the Applicants, who since 1974 have been enduring a continuous violation without redress.
- (36) This will also allow the Court to address the issue of costs that the Applicants have to incur because of the Respondent's deplorable behavior, since 2009.

(ix) Conclusion

- (37) The Respondent's failure to pay the just satisfaction awarded to the Applicants must come to an end and an effective investigation, for them, must be conducted pursuant to the 2009 Judgment.
- (38) For the CMP to become an effective individual measure for the Applicants, its terms of reference must be amended and perhaps be upgraded to a Truth Commission as already suggested by Truth Now NGO.
- (39) Formal notice under Article 46 is needed, to avoid the threat to the credibility of the Convention system as well as provide additional redress to the Applicants, for the period 2010-2025.

Thanking you in advance for your cooperation and would be grateful if this letter is brought to the attention of the Members of the Committee of Ministers, prior to their forthcoming meeting 4 – 6 March 2025 pursuant to Rule 9 of its Rules for the Supervision of the Execution of Judgments.

I remain at your disposal should you require any clarification and wish you all the best for the New Year.

Yours sincerely

Achilleas Demetriades

cc: DGI - Directorate General of Human Rights and Rule of Law
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