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

Communication from Türkiye (03/03/2025) concerning the cases of CYPRUS v. Turkey and VARNAVA AND OTHERS v. Turkey (Applications No. 25781/94, 16064/90).

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 : 1521^e réunion (mars 2025) (DH)

Communication de la Türkiye (03/03/2025) relative aux affaires CHYPRE c. Turquie et VARNAVA ET AUTRES c. Turquie (requêtes n° 25781/94, 16064/90) **[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.

**Supplementary Memorandum (no. 2) in relation to the
Missing Persons cluster of “Cyprus v. Turkey” (25781/94) and
Varnava and Others v. Turkey (16064/90)
1521st meeting of the Ministers’ Deputies (CM(DH))
4-6 March 2025**

1. The Turkish side has informed the Committee of Ministers in two memoranda in relation to the issue of Greek Cypriot “missing persons” which will be taken up in the upcoming (CM)DH meeting on 4-6 March 2025, within the context of the “missing persons” cluster of the “Cyprus v. Turkey” judgment and the *Varnava and Others v. Turkey* judgment. The first one was distributed on 20 December 2024 (DH-DD (2024)1508), and the supplementary memorandum was circulated as a restricted document on 17 February 2025.
2. The Secretariat, following its legal analysis on the merits of the judgments, concluded in its Notes on the Agenda prepared ahead of this meeting, on 18 February 2025, that “... *in the light of the information provided by the Turkish authorities, and in the absence of unanswered questions or information to the contrary, it does not appear, as regards the cooperation of the Turkish authorities with the CMP, the investigative measures of the MPU and the investigations in the case of Varnava, that anything further is needed, except to continue in the same vein.*”¹
3. Despite the legal conclusion that no further measures are necessary, the Greek Cypriot side continues to persist in its dismissive approach which is evident from yet another document it distributed, on 24 February 2025, to repeat the same old, responded, yet evaluated arguments even after the Secretariat’s Notes on the Agenda.
4. This second supplementary memorandum is prepared to inform the Committee on the facts so as to ensure the Committee adopts conclusive decisions on merits at the upcoming CM(DH) meeting within the context of the “missing persons” cluster of “Cyprus v. Turkey” of the 2001 judgment and *Varnava and Others* cases, in line with the independent legal conclusion of the Secretariat.

The Committee on Missing Persons (CMP)

5. While the Greek Cypriot side acknowledges the legal basis which provides for the classification of military areas, it insists on its unsubstantiated argument that there was a change in classification “overnight” in the case of Alsancak/Karavas for the excavations planned for 27 June 2022. As of the said date, CMP did not

¹ CM/Notes/1521/H46-31.

ask for permission to excavate at this particular site in the national park which was and remains in a military area. Indeed, CMP did not ask for permission to excavate in this particular site thereafter either, opting to excavate in nearby locations instead, and applying and receiving the necessary permissions for those particular sites. It appears that it took CMP extra time to conduct additional research and investigation to confirm the exact location for excavations in nearby sites before seeking permissions to proceed. So far, CMP has conducted 3 different excavations in Alsancak/Karavas with the permissions granted by the relevant authorities, one of which began in 2024.

6. As explained in great detail in previous memoranda, it is CMP which determines the exact coordinates of the sites it decides to excavate, also benefitting from the aerial photos from 1974, and asks permissions from the relevant authorities accordingly. Keeping in mind that necessary precautions have to be taken for the safety of CMP staff throughout excavations in the military areas, CMP is given access to an area with a 50-meter diameter (or 25-meter radius). It appears from the established practice of CMP that the allocated area is more than sufficient to conduct and find remains in most cases. In the exceptional cases when excavations have to be conducted nearby, permissions could be sought and CMP staff can proceed with its excavations once the necessary permissions are granted and the safety precautions are extended to such areas.
7. Access of CMP to civilian areas in the TRNC is demonstrated by deeds not words. CMP could excavate in a total of 1275 different civilian sites, 100 of which took place in 2024. The challenges posed by exceptional cases do not cast doubt on the overall effectiveness of the measures in place also for CMP's access to excavate in the civilian areas. The Greek Cypriot side opted not to respond to lack of access of CMP to the civilian areas in the South as also identified in the supplementary memorandum, and in particular its failure to respond positively to CMP's pending request to excavate at the Greek Cypriot leader's office.
8. While the supplementary memorandum makes clear that the Turkish Cypriot Member's Office of CMP shares the maps with defined areas following checks on aerial photos, with the Greek Cypriot Member and the Third Member of CMP, the Greek Cypriot side opts to neglect this information to repeat its old but incorrect narrative that only coordinates are provided to the other CMP Members. It is CMP's decision to enable Turkish Cypriot Member to have access to the aerial photos and the Greek Cypriot Member "to have access to the documents of the Greek Cypriot National Guard".
9. In relation to the excavations at Akçicek/Syskilops, the authorities are certain that CMP is making use of all information that is available, and the fact that CMP has ongoing excavations in the area demonstrates that CMP found the available

information credible to proceed with its work. To reiterate, *“CMP conducts internally its own analysis based on confidential information collected to identify the possible burial sites that would lead to findings. Of course, neither the CMP nor the Turkish side that grants access to military areas can guarantee the excavations would lead to findings, or be held accountable for how many excavation in military areas actually resulted in findings in the way suggested by the Greek Cypriot side.”*²

10. The Greek Cypriot side has clarified its allegation on reburials which it argued took place as late as 2008. Its explanations about Lapatsa Hill point to unintentional dispersion of remains during reforestation, as opposed to intentional reburial. Thus, the testimony of the Third Member of CMP during their visit to CM(DH) in December 2013 that intentional disturbances took place in 1990s on both sides remains correct. On our part, there is no record of remains being “taken” during this process.
11. The Greek Cypriot side does not appear to challenge the fact that CMP has gone beyond its mandate when it comes to sending additional fragments of bones for further testing of those already identified at Paşaköy/Ashia. Furthermore, while the Greek Cypriot side takes issue with its authority to indicate whether remains could be found at the landfill, the European Commission can speak authoritatively as to whether human remains could be found at the former landfill at Dikomo/Dikmen due to the part it played in the rehabilitation of the former landfill there between 2009 and 2012 which it had funded. As the European Commission found *“When the EU funded the rehabilitation of the former landfill at Dikomo/Dikmen between 2009 and 2012 due to the environmental risks it posed, there was no indication that it could contain human remains. The workers also did not come across any human remains. The rehabilitated area now consists of a high hill and an extensive underground network of methane gas evacuation pipes. This not only renders the excavation of the site very complex and highly risky, but also increases the uncertainty of the possibility to recover and identify the remains of the missing persons following the inevitable disturbance that has occurred after the remains were reburied there almost 30 years.”* The environmental experts who analysed the possibility of excavations subsequently only confirmed the very high risk associated with excavations in their risk assessment reports.

Missing Persons Unit (MPU)

12. Statistics on the workings of the MPU and the Attorney-General’s Office have been shared with CM(DH), also after March 2022, and the criteria to assess their effectiveness have been further clarified through the applicable case-law of the

² Please see paragraph 21 of DH-DD(2024)210, dated 22 February 2024.

European Court of Human Rights, which confirms that obligation is of means and not result. The Secretariat has also concluded in its Notes on the Agenda that “*no further measure appears required in this respect.*” Consequently, the effectiveness of the MPU has been established.

13. Since the submission of the supplementary memorandum on 17 February 2025, the Attorney-General’s Office has concluded its examination on 6 additional File Reports. As of 25 February 2025, out of the 746 files forwarded by CMP, the Attorney-General’s Office has prepared file reports for 558 files. At present, MPU has 158 files before it which are at different stages of criminal investigation and the Attorney-General’s Office has 30 files under its examination.

Varnava and Others

14. The Greek Cypriot side attempts to diminish the importance of finding remains which may belong to at least two more missing persons in issue in the *Varnava and Others* judgment, which are now in the process of identification. Irrespective of the outcome, the effective measures that have already produced results for the 3 missing persons in *Varnava*, for which the Secretariat proposes that no further measures are required, will continue to operate with respect to the rest of missing persons. As such, no further measures or information are required for the nine missing persons in issue in this judgment.

Payment of just satisfaction

15. Just to clarify, what perpetuates “prioritization and injustice” towards Turkish Cypriot missing persons and their relatives is the persisting failure of the Greek Cypriot side to fulfil its obligations towards Turkish Cypriot missing persons and their relatives, with respect to the CMP phase, conducting effective criminal investigations, and failure to “*ensure that the families of the victims obtain appropriate redress, including adequate compensation and psychological rehabilitation*”, as identified by the UN Human Rights Committee as early as in 2015.³ The Greek Cypriot side had no say but to claim this fact is “without sound factual basis” and “patently irrelevant”. We disagree.
16. The role that falls upon the Council of Europe at large to address this “prioritization and injustice” is even more relevant given the Greek Cypriot belief that “only focused pressure from the Committee might achieve useful results” and bring compliance.

The Way Forward

³ CCPR/C/CYPR/CO/4, para. 10.

17. CM(DH) is requested to reflect the conclusion that no further measures are necessary as regards the cooperation with CMP, investigative measures of the MPU and the investigations in the case of *Varnava* in its decisions at the upcoming CM(DH).
18. Previously, CM(DH) treated judgments on merits and just satisfaction separately and have taken separate resolutions for closure. This is where the *Loizidou* precedent becomes relevant for the Committee to follow at this stage with the closure of the 2001 judgment on merits in the case of “Cyprus v. Turkey”.
19. Furthermore, 2014 just satisfaction judgment is exceptional, the first of its kind as it is so-called “inter-state in nature”, delivered 13 years after the delivery of the 2001 judgment on merits. In judgments concerning individual applicants, payment of just satisfaction is treated as an individual measure, and thus not applicable to the 2001 judgment on merits, enabling the treatment of the two judgments separately.
20. Furthermore, there was a 13-year gap between the delivery of the 2001 judgment and the 2014 judgment, which made it possible to close supervision of the 2001 judgment even before the delivery of the just satisfaction judgment in 2014. This marks the exceptional nature of the 2001 judgment warranting different treatment than the Committee’s usual practice of closing judgment on the merits when just satisfaction is paid as concerns individual applications.
21. In its previous practice, CM(DH) has also departed from its “usual practice” and separated the issue of just satisfaction from its merits in the case of *Varnava* to adopt an interim resolution on the payment issue alone. In adopting interim resolution on the issue of payment (CM/ResDH(2014)185), CM(DH) disassociated the issue of payment from the measures of substance in the *Varnava* case and the *Xenides-Arestis* Group.
22. This practice enables CM(DH) to separate, again, measures of substance from just satisfaction, this time to acknowledge the fact that no measures are necessary for substance in relation to the *Varnava* case.
23. By way of conclusion, at this stage, the Turkish side reiterates its request for the closure of supervision of execution of the “missing persons” part of the 2001 “Cyprus v. Turkey” case and the merits in relation to the *Varnava* case.