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Meeting: 1362nd meeting (December 2019) (DH)

Communication from Turkey (08/11/2019) in 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 : 1362^e réunion (décembre 2019) (DH)

Communication de la Turquie (08/11/2019) dans les 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.

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08 NOV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

MEMORANDUM

Missing persons cluster of “*Cyprus v. Turkey*” and *Varnava and others v. Turkey* 1362nd meeting of the Ministers’ Deputies (CM-DH) 3-5 December 2019

Introduction

1. The issue of “missing persons” will be taken up during the Committee of Ministers meeting in human rights format (CM(DH) meeting) in December as part of its examination of the “*Cyprus v. Turkey*”¹ and *Varnava* cases.²
2. The measures that are discussed within the framework of the “missing persons” cluster of “*Cyprus v. Turkey*” case are also the general measures for the *Varnava* case. In addition, CM(DH) will also be informed about the individual measures taken with respect to the *Varnava* case.

The effective implementation of the measures taken

3. The Turkish side has been conducting effective investigations in two phases; the first phase being the phase entrusted to the Committee on Missing Persons in Cyprus (CMP), followed by the second phase, which is conducted by the Missing Persons Unit (MPU) of the Police Force and the Attorney-General’s Office of the Turkish Republic of Northern Cyprus (TRNC).
4. CM(DH) has been examining the measures taken by the Turkish side for over a decade now. In its most recent examination in March 2019, CM(DH)
 - a. **with respect to the CMP phase**, called upon the Turkish side (a) to provide the CMP *proprio motu* with any information from the relevant archives on burial sites and places of possible relocation of remains, and (b) to ensure that CMP has unhindered access to all areas of interest, including military zones, and
 - b. **with respect to the MPU phase**, asked for information (a) on the progress of the investigations and conclusions in the final reports concerning Savvas Apostolides and Andreas Varnava in particular and (b) on the additional resources made available to the MPU.
5. In this memorandum, the Turkish side will provide an update on the implementation of the measures taken, taking into account the decision of the CM-DH adopted at the March 2019 CM(DH) meeting.

Committee on Missing Persons (CMP) as a first step in the investigation process:

6. In Cyprus, both the Turkish Cypriot side and the Greek Cypriot side entrusted the CMP with the task of locating, exhuming and identifying missing Turkish Cypriots and Greek Cypriots which CMP is delivering as part of the project on the Exhumation, Identification

¹ “*Cyprus v. Turkey*” [GC], no. 25781/94, ECHR 2001-IV.

² *Varnava and others v. Turkey*, applications nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90.

and Return of Remains of Missing Persons in Cyprus launched in 2006. CMP has also been providing information to the families about the fate of their missing relatives and giving them the remains for a proper burial. In the case of *Varnava*, the ECtHR gave full credit to the work of the CMP as a first step in the investigative process.³

7. The Turkish side has been providing the CMP with all the necessary assistance for it to continue to achieve tangible results as quickly as possible.

A. New Information to locate places of burial:

8. The Turkish side has already provided all the information at its disposal about possible burial sites as per the 1997 Agreement between the Turkish Cypriot and Greek Cypriot Leaders in order to assist the CMP **to locate the bodies of missing persons**. The report of the United Nations Secretary-General in 2000 reflects this development.⁴
9. Thereafter, the Turkish side has continued to provide any new relevant information about possible burial sites and places of possible relocation of remains that could help the CMP in its work.⁵ To this end, on 29 January 2019, TRNC police *proprio motu* gave to the Turkish Cypriot Member of CMP the remains found in the Şirinevler-Göçeri area so that they check whether they belong to a missing person on the CMP's list.
10. As the CMP advanced its work on the 2006 Project, it has decided to ask for information from the relevant archives of twelve stakeholders that were present in Cyprus in 1963/64 and in 1974 when the disappearances took place. In addition to the applicant and Greece, the Turkish side was one of those stakeholders that were directed specific questions.
11. In response, the Turkish side established in 2016 an Archive Committee in the TRNC, which comprises military authorities, police authorities, experts from the Ministry of Health and National Archives as well as other relevant units of the TRNC Government, to examine the relevant archives for the information requested by the CMP regarding the locations of missing persons. The Committee has been actively cooperating to respond to the information requested by the CMP. As per the agreement of the Three Members of the CMP, information from the archives of the Turkish side is provided to the CMP through the Turkish Cypriot Member's Office. In this connection, Turkish Cypriot Member's Office has been given access to the aerial photos dating 1974.

³ *Varnava*, § 189.

⁴ Report of the UN Secretary-General to the Security Council, S/2000/1138/1 December 2000, para. 14.

⁵ During the CM(DH) meeting of December 2013 when this issue was taken up with the participation of all three CMP Members, the Third Member of the CMP, appointed by the UN Secretary-General, explained that relocations are the result of natural or unintended disturbances, and sometimes there are intentional removals. But, intentional removals took place in 1990s both in the North and in the South Cyprus, the latter under the control of the applicant. The Third Member confirmed that there was no information regarding recent relocations. This was due to the fact that the CMP has already taken the necessary measures to prevent relocations by keeping the information about suspected burial sites confidential.

In the case of "*Davut Cakıcısoy and others v. Cyprus*", (appl. no. 6523/12), ECtHR did not find a violation due to the failure of the applicant to conduct investigation into the relocation of the remains belonging to Turkish Cypriot missing persons, but instead considered the delay in the work of the CMP to be natural in view of the practical problems of locating remains and identifying them in the context of a large-scale exhumation project and the difficulties of tracing witnesses and evidence after such a long period of time.

12. TRNC Presidency has also set up a new investigation unit *proprio motu* to support the Turkish Cypriot Member's Office investigation team in its efforts to locate burial sites of missing persons.
13. The Turkish Cypriot Member's Office investigation team is doing its own research in various archives, including those of the TRNC Presidency and former President Denktas etc.
14. In the Cyprus context, the primary source of information for the CMP has been witnesses. As it should be recalled, the names of informants are kept secret and this is accommodated by the Attorney-General Offices on both sides in order to lend further support to the work of the CMP and to encourage people with information on possible burial sites of missing persons to share this with the CMP. As part of its public outreach, CMP has been urging Turkish Cypriots to come forward and assist the CMP through its hotline, the number of which has been publishing on billboards in the TRNC.

B. Access of CMP:

15. The Turkish side continues to accommodate the requests of the CMP for access to any area throughout the TRNC, be it by interrupting the construction of a major road or taking the appropriate measures to ensure the safe access of the CMP staff to the military areas.
16. In the North, a total of 1050 exhumations were conducted by the CMP, 992 in the civilian areas and 58 in the military areas.
17. In June 2019, CMP's requests for access to 30 additional suspected burial sites located in the military areas in the TRNC have been granted. There will not be any time constraint attached to the access and excavation planning will be decided by CMP. This decision which will accelerate CMP's humanitarian work is welcomed by the CMP.⁶
18. Up to 31 October 2019, CMP exhumed 1229 missing persons out of 2002 missing as of 2006, both Turkish Cypriot and Greek Cypriot.⁷
19. Following the discovery of the remains, CMP conducts identification through scientific means, namely through genetic testing and matching.
20. According to the statistics published by CMP, as of 31 October 2019, 961 missing persons have been identified by the CMP; 266 Turkish Cypriot and 695 Greek Cypriot. CMP also identified 167 individuals who were not on its official missing persons list.⁸
21. In *Charalambous*, ECtHR considered CMP's function to **discover and identify the missing persons as effective**⁹ and held that the Turkish side may take benefit of the work done by the CMP in this respect and found that there was no indication of any failings or undue delay as regards CMP's fulfillment of these functions.¹⁰

⁶ www.cmp-cyprus.org/press-releases/turkey-grants-access-cmp-30-military-areas

⁷ <http://www.cmp-cyprus.org/content/facts-and-figures>

⁸ <http://www.cmp-cyprus.org/content/facts-and-figures>

⁹ *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 et al., 1 June 2010, §60.

¹⁰ *Charalambous*, §60.

22. While commending the work of the CMP, in July 2019, the UN Security Council called upon "... *all parties expeditiously to enhance their cooperation with the Committee's work, in particular through providing full access to all areas and responding in a timely manner to requests for archival information on possible burial sites*".¹¹ As it is outlined above, the Turkish side has been doing its part to ensure CMP continues to function effectively. Having said that, in the South, both the applicant and Greece have military camps and military areas under their control and are in possession of archival information for the period of 1963-64 and 1974 when the disappearances took place. In particular, the police records kept by the Greek Cypriot side for the 1963-64 period, which have not yet been shared with the CMP, are especially crucial in locating Turkish Cypriots who disappeared from police checkpoints so as to ensure the continuation of the effectiveness of the CMP.
23. Thus, within the context of ensuring the continuation of the effectiveness of the CMP, the Turkish side joins the repeated calls of the UN Security Council to remind all relevant parties of their obligations in giving the CMP full access to all areas as well as to respond to the requests of CMP for archival information on possible burial sites.¹²

C. Other Support to the CMP:

24. Both Turkey and the TRNC continue to support CMP financially. In addition to annual financial contributions to the budget of the Office of the Turkish Cypriot Member of the CMP, an amount approximately EUR 1,000,000 per year, TRNC President Mustafa Akıncı made an additional donation in the amount of EUR 75,000 on 30 January 2019 to CMP. The total contributions of the Turkish Cypriot side since 2006 thus reached to 433,000 EUR. Turkey has made a contribution of \$100,000 to CMP in July 2019, increasing the total amount of her contribution to EUR 998,000. The EU's 2019 contributions in the amount of 3,000,000 EUR are from the funds European Union earmarked for the economic development of Turkish Cypriots. Total contribution of the European Union from the Turkish Cypriot funds up to now amounts 25,500,000 EUR.

The Missing Persons Unit (MPU) and the Attorney-General's Office as the second step in the investigation process:

A. Progress in the Investigations:

25. The steps that were foreseen following the conclusion of the "first step in the investigative process" by the CMP were set out in the case of *Varnava*, namely "... *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*".¹³

¹¹ S/RES/2483 (2019), dated 25 July 2019, operative para. 7.

¹² The Greek Cypriot "highest court's" judgment in the case of "*Pashias v AGR*", dated 26 May 2015, is especially concerning since the Greek Cypriot side accepts responsibility under Article 2 of the European Convention on Human Rights only after CMP locates the place of burial, excavates exhumed and finally identifies missing persons. This holding gives even more judicial immunity for the omissions of Greek Cypriot authorities than the previous "administrative court" which found such acts/omissions to be within the sphere of "act of government".

¹³ *Varnava*, § 192.

26. MPU has been established thereafter to take on the role of the authority described by the ECtHR. After the CMP completes its mission and conveys the relatives the identified remains, personal effects and scientific information about the remains, the Turkish Cypriot Office of the CMP hands case files concerning Greek Cypriot missing persons to the MPU. To this day, CMP conveyed 685 case files to the MPU. The case files include basic information about the identity of the missing person and initial information about the disappearance, but information on the process leading to the finding of the remains, maps, photographs, transcripts etc. remain in the possession of the relatives. When MPU asked for that information, CMP advised MPU to contact relatives for personal belongings handed over to them and said that other relevant information are confidential within its terms of reference and could not be passed onto the MPU.
27. Despite numerous attempts of the MPU to reach out to the families of Greek Cypriot missing persons for information, it was not possible to publish an announcement in the Greek Cypriot press. Finally, the announcement published in the Turkish Cypriot press found its way in the Greek Cypriot media, yet very few families participated in the investigations.
28. Among the 442 Greek Cypriot missing persons relatives who were specifically identified from their applications before the European Court of Human Rights and invited to the MPU, only 24 Greek Cypriots came to the Police Headquarters. Even fewer, namely 15, agreed to give written statements.
29. MPU continued their investigations in the TRNC in the places where the Greek Cypriot missing persons were allegedly found and/or disappeared, followed leads and received written statements from a total of 595 witnesses. MPU proceeded to conduct excavations anew in 47 different villages and cities where the remains were allegedly found by the CMP as this information was also kept confidential by CMP. In 25 other areas, excavations could not take place due to the conditions on the ground, yet the locations were recorded and photographed. MPU also contacted numerous authorities, some through diplomatic channels, to pursue the leads in the criminal investigations with a view to finding the circumstances of death and to identify the perpetrators.
30. MPU finalized 439 of cases concerning Greek Cypriot missing persons and forwarded them to the Attorney-General's Office. As for the remaining files before the MPU, 209 files are in advance stages of investigation and 37 files are in earlier stages.
31. After receiving the criminal investigation file and report, the Attorney-General's Office may either instruct MPU to conduct further investigation or if content with the investigation, the Office will proceed to decide whether there is essential foundation of evidence that is capable to give rise to a reasonable prospect of conviction of the suspects identified, if any, and thus justify their prosecution for a crime that took place in 1963-64 or in 1974. In light of the findings in the investigations, the Attorney-General's Office may also decide to close provisionally the investigation to be opened when new evidence or information comes to light. To date, the Attorney-General's Office concluded its examination concerning 306 files. Attorney-General's Office is currently working on the remaining 133 files that were forwarded to them by the MPU.

32. The analysis of the Attorney-General's Office are summarized in File Reports to be conveyed to the relatives of the missing persons which explain the steps taken in the criminal investigation i.e. leads followed by the Police, the enquiries made with official bodies and organizations, including the Turkish military archives via diplomatic channels etc. The File Reports are then shared with those family members identified. The Reports also include the decision of the Attorney-General's Office as to the presence of sufficient evidence that would justify prosecution or provisional closure of the investigation.
33. It should be underlined that the File Reports contain summaries in a way to be presented to the families concerning the essence of the investigation conducted in view of the Court's case-law in this respect. As the File Reports are specific to the facts of each case and set out the circumstances leading to the disappearance of each missing person, the evidence collected to shed light to those circumstances and to find the perpetrators are not the same in every case, thus there is not a single conclusion given in the completed File Reports.
34. Criminal investigations conducted by the MPU, under the guidance of the Attorney-General's Office, take the ECtHR case-law as the benchmark. According to this case-law, conclusions reached in completed investigations are not the yardstick to determine whether investigations have been conducted effectively.¹⁴

B. Individual measures in the case of *Varnava*:

35. There were nine missing persons in the *Varnava* case, three of whom have been found and identified by the CMP.
36. The investigation of Andreas Varnava of the *Varnava* case has been completed and the legal representative of the family has been sent the File Report on 11 March 2019. Detailed information on the investigation of Andreas Varnava is provided in Annex A.
37. The investigation of the MPU concerning Savvas Apostolides, another missing person in the *Varnava* case who has been identified by the CMP, is nearing completion. So far, MPU received responses from the Turkish Cypriot Security Forces, the TRNC Police Headquarters, as well as the Turkish Red Crescent, the Turkish Security Forces and the Ministry of Justice of Turkey through diplomatic channels. Witness statements have been obtained and the site where the excavation will take place has been identified. Excavation will take place after CMP, which has priority, completes its excavations in the area.

¹⁴ The ECtHR analyzed a number of steps the MPU has taken in conducting criminal investigations with respect to Greek Cypriot missing persons identified by the CMP under the guidance of the Attorney General's Office in the *Charalambous* line of applications and declared the applications inadmissible. Thereafter, the ECtHR reviewed 3 similar criminal investigations that were completed by the applicant with respect to Turkish Cypriot missing persons identified by the CMP where the applicant's "Attorney General" concluded that "there is insufficient evidence to bring prosecutions and pending further evidence coming to light, the investigations must now be regarded as closed" (*Gürtekin and Others v. Cyprus*", (nos. 60441/13, 68206/13 and 68667/13), 11 March 2014, §24).

38. As it should be recalled, CM(DH) was already informed about the investigation concerning Savvas Hadjipantelli, one of the missing persons in the *Varnava* case, which has been concluded.
39. The remaining six missing persons in the *Varnava* case are in the first phase of investigations vested in the CMP.

C. Additional resources to the MPU

40. MPU has been strengthened financially and has been allocated about 250,000 Euros in the 2018 budget for the salaries of the 11 investigators and staff working at the MPU. There has thus been an increase of 35,000 Euros from the 2017 budget. The money spent for salaries of the staff as well as costs and expenses incurred in the activities of MPU so far exceed 255,000 EUR.

Conclusion

41. As it can be seen above, the Turkish side is doing its part in ensuring the continuation of investigations into missing persons. The Turkish side assists the CMP to ensure the continuation of its effectiveness and the MPU under the guidance of the TRNC Attorney-General's Office continues to conduct effective investigations for those missing persons who have been identified by the CMP.
42. In this respect, the Turkish side requests the Committee welcome
- a. the assistance of the Turkish side to the CMP in ensuring it locates the bodies, exhumes, excavates and identifies the remains belonging to missing persons, and in particular,
 - the formation of a new investigation unit at the TRNC Presidency to support the work of the Turkish Cypriot Member's Office of the CMP, and
 - the access granted to CMP for 30 additional military areas,
 - b. the effective investigations undertaken by the MPU and the Attorney-General's Office, and in particular the conclusion of the investigation of Mr Varnava.
43. Given the ongoing progress concerning missing persons issue and also considering the complex and time-consuming nature of the work of the CMP and MPU, due to factors beyond the control of the Turkish side, the Turkish side reiterates its request to examine the missing persons cluster of the "*Cyprus v. Turkey*" case and the *Varnava* case on a yearly basis instead of the current cycle (9 months).

Annex A

File Report Summary of Andreas Varnava

The Attorney General informed the family that:

- (a) It had before it a file including an application filed at the ECtHR concerning the death of the deceased. In the application it was alleged that the deceased went missing in August 1974 when the Turkish Armed Forces were retreating from an area that they had taken control over. The remains of the deceased were found in another village during the exhumations carried out by the Committee of Missing Persons (CMP) under the auspices of the United Nations.
- (b) The TRNC Police invited the deceased's relatives, the lawyer and any other witnesses who might have any information as to the disappearance and/or death of the deceased to come to the TRNC Police Headquarters to provide that information through contacting the Applicant's solicitor via telephone and fax. Also, the TRNC Police tried to publish a notice in the newspapers in South Cyprus inviting any person with knowledge of the disappearance and/or death of the deceased to come forth. Unfortunately, the newspapers in South Cyprus did not publish the notice. Despite these invitations no person not even the Applicant(s) or the solicitor came to provide any information.
- (c) The TRNC Police firstly conducted an investigation in the village where the deceased's remains were exhumed. The TRNC Police drew plans of the area, took photos and searched areas for evidence with a metal detector, still the Police could not find any trace of any evidence.
- (d) The TRNC Police also conducted thorough investigations in four villages including the village where the deceased went missing in 1974. Within these investigations statements were taken from many persons. However, no information was presented confirming the facts alleged in the ECtHR application or shedding light on the direction of the investigations from the statements obtained.
- (e) The TRNC Police Headquarters through the TAK News Agency, distributed a press release informing the public that a police force was established within the TRNC Police Headquarters with the purpose of carrying out investigations concerning the remains that were found by the CMP of persons who went missing in 1974. The public was invited to come forth and give statements. This press release was published in the local newspapers and broadcasted on the local TV channels.
- (f) The TRNC Police contacted various penal institutions (prisons) through the Department of International Justice and Foreign Affairs, a department of the Ministry of Justice in the Republic of Turkey through diplomatic channels but no record was found of the deceased. Consequently, the allegation in the Application that a witness saw the deceased at a prison in Turkey could not be corroborated. CMP was also

contacted requesting information such as plans, photos of the exhumations or the personal belongings of the deceased found at the excavation sites. CMP responded by stating that the personal belongings were handed over to the family and the other information could not be shared due to the confidentiality principle.

- (g) The TRNC police also discovered within the wide-scaled investigation carried out that on the day that the deceased went missing there was fighting in the area. Most of the soldiers from both sides who were killed in the battle were buried in order to avoid an epidemic contagious disease.
- (h) The Attorney-General concluded that after comprehensively examining the criminal investigation file referred by the Police the current statements and evidence could not lead to a criminal prosecution. Since, the investigated matter is one of the most serious crimes in the TRNC, for a case to commence and for a person to be prosecuted it must be proven beyond reasonable doubt that the person charged committed that crime. The investigation file although complete, did not include any statements or evidence which could prove that a particular person or persons committed the crime in question beyond reasonable doubt. Despite all the efforts of the TRNC Police the deceased's relatives (applicants) and/or any other witnesses did not come forth and give any information or statements to shed more light for the TRNC Police to go further in their investigations. Therefore, the file was closed. Nevertheless, if new evidence or information comes to light and is brought to the attention of the police, this information would be referred to the Office of the Attorney-General and the file could be re-opened.