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Contact: John Darcy
Tel: 03 88 41 31 56

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

Communication from the Cypriot authorities (26/11/2019) in the case of CYPRUS v. Turkey (Application No. 25781/94)

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Réunion : 1362^e réunion (décembre 2019) (DH)

Communication des autorités chypriotes (26/11/2019) relative à l'affaire CHYPRE c. Turquie (requête n° 25781/94)

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.

(Anglais uniquement)

CYPRUS v TURKEY
Application No. 25781/94

MISSING PERSONS
PAYMENT OF JUST SATISFACTION

1362nd CM(DH) MEETING, DECEMBER 2019
MEMORANDUM
BY THE REPUBLIC OF CYPRUS

DGI

26 NOV. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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 1340th meeting of March 2019. It is with regret that the Republic of Cyprus notes that Turkey did not participate in the discussion in March 2019 and provided no information at the time in respect to the important humanitarian issues which arise in this case.
2. 18 years after the Court handed down its main judgment, the Decisions¹ taken by the Deputies at the meeting of March 2019 highlighted yet again, significant aspects of Turkey's non-compliance, in terms of (a) the necessity of providing proactive and/or all necessary assistance to the Committee on Missing Persons ('CMP'), and (b) to conduct effective investigations into the circumstances surrounding the disappearances of the missing persons. Nine months after those Decisions, however:
 - a. Turkey has yet to fully abide 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 thereby continues to be unjustifiably prolonged.
 - b. Turkey continues to refuse to pay the Just Satisfaction awarded by the Court in its 2014 judgment. Turkey's protestations of good faith must be measured against its continued and unexplained failure to pay those amounts, as well as its repeated failure to provide the Committee any information whatsoever on the issue.

¹ CM/Del/Dec(2019)1340/H46-23.

3. The Republic of Cyprus notes with regret that in its Memorandum for this meeting,² Turkey once again fails to provide sufficient and/or any information in relation to the fulfilment of its obligations, in three distinct respects: (i) the immediate payment of the Just Satisfaction awarded by the Court in its judgment of 12 May 2014, (ii) the urgent need to provide the CMP with proactive and/or all necessary assistance to so that it may progress to effectively carry out its mandate in determining the fate of the missing persons, (ii) the urgent need to conduct effective investigations into the circumstances surrounding the disappearances of the missing persons.

A. JUST SATISFACTION

4. The Republic of Cyprus deeply regrets yet again, that Turkey still remains in flagrant violation of its international obligations under Article 46 of the Convention, having failed to pay to date the amounts awarded by the Court as Just satisfaction in its judgment of 12 May 2014, that is, 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. Since 2014, no relevant information on the matter has been forthcoming and no indication of the date of payment has been provided during proceedings before the Committee. Turkey's Memorandum for this meeting is again silent on the matter.
5. As the Republic of Cyprus has highlighted at previous meetings, 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

² DH-DD(2019)1310.

that do not comply with this principle must be made judicially accountable for their actions, without prejudice to additional political consequences.”

6. That passage demonstrates not only the exceptional significance of the judgment, but also the gravity of Turkey’s failure to respond in any way to the binding, and unconditional, obligation placed on it by the Grand Chamber of the Court.
7. 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.
8. Turkey’s continued failure to pay the just satisfaction that has been awarded by the Court, years after it fell due, demonstrates her flagrant disregard not only for her international obligations, but also for the individual victims that those amounts were intended to benefit. The more time that goes by, the older those victims become, and the less benefit they will be able to derive from the just satisfaction such compensation as may eventually be paid.
9. 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.
10. At its 1340th meeting of March 2019, the Committee *“insisted again firmly on the unconditional obligation of Turkey to pay the just satisfaction awarded by the European Court in the judgment of 12 May 2014 without further delay”*.³ Having, once more, wholly disregarded the call of the Committee, Turkey should, 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,

³

CM/Del/Dec(2018)1331/H46-28.

- b. make immediately and in advance of the 1362th meeting, payment, with interest, of the just satisfaction that has been awarded by the Court.

11. In the event that payment has still not been made by the time of the 1362th meeting, the Deputies should consider instructing 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 Convention obligations.

B. ASSISTANCE TO THE CMP

12. With their Decision of March 2019, the Deputies *"reiterated that, due to the passage of time, it remains urgent for the Turkish authorities to provide the Committee on Missing Persons (CMP) with all necessary assistance for it to continue to achieve tangible results as quickly as possible"*. In this regard, they unequivocally called upon the Turkish authorities to:

- ensure that the CMP has unhindered access to all areas of interest including military zones located in the northern part of Cyprus,
- to provide the CMP *proprio motu* with any information from the relevant archives, including military archives, in their possession on burial sites and places of possible relocation of remains.

13. The Committee is reminded that under its restricted mandate, the CMP's task is to only locate and identify the remains of the missing persons, and 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. Turkey is under an obligation to comply with the Court's judgment in its entirety: this requires both unstinting

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." See further *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), Judgment of 18 September 2009, §192.

compliance with the work of the CMP and decisive unilateral action in areas where the CMP has no jurisdiction.

14. In its report entitled “Strategy 2017 – 2020”, the CMP 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 A significant decrease in the last few years in the number of individuals exhumed and identified per year, and the decline in the percentage of successful excavations, as shown by the data provided by the CMP itself,⁶ suggests that the CMP is struggling even to discharge its own narrow responsibilities.
15. The key to progress in the CMP’s work and indeed to the increase in the number of identifications of missing persons, is held by Turkey. Significant hindrances to the work of the CMP which are imputable to Turkey, are the denial of access to both military zones and civilian areas, a lack of access to crucial information, and a failure to protect and safeguard known or suspected burial sites. Accordingly, the Deputies have repeatedly emphasised that the proactive assistance which Turkey is under an obligation to provide to the CMP is essential to that body’s efficacy. This requires progress, *inter alia*, in the following areas.

Access to military zones

16. A substantial part (some 60%) of the territory under the effective control of Turkish troops in the occupied areas of Cyprus 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 November 2015, permission was given to the CMP to access 30 sites in military areas in the occupied areas of Cyprus, with the CMP planning to carry out excavations in ten zones per year starting from 2016. In 2017, permission was granted to the CMP to access an eleventh zone in addition to the ten for which permission was granted that year. Accordingly, in June 2018, the Deputies “*noted with interest ... the information submitted by the Turkish authorities that the CMP will*

⁵ Committee on Missing Persons in Cyprus, *Strategy 2017-2020*, Executive Summary.

⁶ Data provided by the CMP at <http://www.cmp-cyprus.org/content/facts-and-figures>.

*excavate in eight additional military areas in 2018*⁷. In this connection, even though a request was made in September 2018 to the military authorities to replace 6 of the military areas which according to the 2015 Agreement were to be excavated in 2018, with 6 new sites, an excavation began only in one of the 6 new sites indicated (Askeia), and no written confirmation regarding the final number of granted permissions was provided.

17. Accordingly, the Republic of Cyprus has repeatedly brought to the attention of the Committee the importance of granting **immediate** and **unhindered** access to the CMP and its staff, to suspected or known burial sites in locations designated as military zones in the occupied areas of Cyprus. Even though at the 1273th meeting of December 2016, the Turkish authorities informed the *Committee that “the CMP can proceed with excavation in military areas by merely informing the relevant authorities”*⁸, in reality, such excavations and/or access to military areas require the permission of the Turkish military authorities, which can under any circumstances be withheld. Turkey requires that the military authorities are given notice one week in advance of the CMP’s intention to excavate, and of the identity of the persons who will participate in the scheduled excavation (including CMP and non-CMP members i.e. witnesses / informants). The conditions under which such permission may be denied, or scheduled excavations disrupted, remain unclear to date.

18. With the above hindrances in mind, at the 1340th meeting of March 2019, at which Turkey did not participate, the Deputies once again *“called upon the Turkish authorities to ensure that the CMP has unhindered access to all areas of interest including military zones located in the northern part of Cyprus...”*⁹.

19. The Republic of Cyprus would like to have welcomed the development of June 2019, whereby the Turkish authorities granted permission to the CMP to access 30 additional sites in military areas in the occupied areas of Cyprus. However, it cannot do so because the unfortunate reality on the ground is that unhindered access continues to be withheld.

20. The procedures for gaining access to military sites remain complicated and time consuming. Notably, since June 2019, only seven of the thirty sites were visited by the

⁷ CM/Del/Dec(2018)1318/H46-24.

⁸ See DH- DD(2016)1323, par. 16.

⁹ CM/Del/Dec(2019)1340/H46-23.

CMP to prepare for excavation, with no excavations having commenced to date. Excavation works conducted by the CMP in military areas to which access was eventually granted pursuant to pressure by the CM(DH) have been repeatedly interrupted by Turkish military forces (e.g. in Dikomo); the close and undue monitoring of these areas by Turkish troops therefore constitutes a hindrance to the work of the CMP. Also unduly hindered, without reasonable explanation, are visits and access of witnesses and CMP staff to such sites. Even though the Turkish authorities have previously stated that witnesses and informants can visit known or suspected burial sites in military zones, provided that the military authorities are notified at least three working days in advance and are given the names, identification card numbers and car registration plates of the persons visiting, witnesses and CMP staff have repeatedly been denied access. Such instances include CMP staff and witnesses in the area of Deryneia and Stavros cemetery in the fenced-up area of Varosha (Famagusta). In instances where witnesses were allowed to access a military area (in Trahonas, for example), they were not allowed freedom of movement, and as a result, lacked orientation to be able to provide exact information on the location of a burial place known to them.

21. It becomes evident from the above that Turkey has failed to date to provide immediate and unhindered access to all military zones in the occupied areas, despite the repeated calls by the Deputies to this effect, most recently in March 2019.

Access to civilian areas

22. As highlighted by the Republic of Cyprus at the 1340th meeting in March 2019, the problems relating to access to suspected or known burial locations are not limited to military zones. In its Decision in March 2019, the Deputies *“called upon the Turkish authorities to ensure that the CMP has unhindered access to all areas of interest, including military zones...”*. The Republic Cyprus identified in March 2019 at least 16 possible burial locations in civilian areas in the occupied part of Cyprus where the CMP had tried to excavate but where it was refused permission to do so on the basis that the owner and/or occupant did not give his/her consent.¹⁰ Another four cases which were thereafter reported relate to access to sites in Mia Milia, Exo Metochi, and Lapithos (2 cases). Despite the fact that these instances clearly demonstrate an urgent need to

¹⁰ Argyta, Piyi Peristerona, Karavas, Epicho, Kythrea, Kioneli, Ammochostos (5 cases), Galateia, Neo Chorio, Lapithos, Kafazani and Kerinia.

address the issue to allow the CMP to excavate at its discretion in civilian areas, against the wishes of the owner and/or occupant, where burial locations are reported to exist, no such initiative has been taken to date. Moreover, no relevant information or reference to this issue is provided in Turkey's memorandum for this meeting.

Provision of information

23. The provision of information remains another crucial factor which determines the success rate of the CMP's work and the efficient use of its resources. Information which will lead to an increase in the recovery of the remains of missing persons by the CMP, which only Turkey has access to, can be provided either from written records found in her military archives, or from personal testimonies of her military or auxiliary personnel who 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. The fact that bodies were collected from the clearing of the battlefields after the Turkish invasion of Cyprus in 1974, is evidenced, *inter alia*, by document UNFICYPHQ.F024.017 dated 5 March 1975, located in the UN archives¹¹, as well as by a number of witness statements. Yet details on the mass burial locations of bodies that were collected from the battlefields, which can only be found in the military archives in Turkey's possession, continue to be withheld.

24. In its memorandum for this meeting (at para. 8), Turkey claims to have provided "*all the information at its disposal about possible burial sites*", citing a report of the Secretary General of the United Nations prepared in the year 2000. At the 1318th meeting of June 2018, however, 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...*".¹² They also "*noted with interest in this respect the information submitted by the Turkish authorities.....on the ongoing work of*

¹¹ With this document, Perez De Cuellar informed the UN Secretary General that the Turkish Cypriot Rauf Denktash affirmed that "Turkish and /or TkCyp sanitation personnel had on account of summer heat, hurriedly buried dead without removing tags, if any, and without marking graves and that, therefore, there was no hope in finding remains".

¹² CM/Del/Dec(2017)1294/H46-30.

the archives committee established by the Turkish side to examine the relevant archives for the information requested by the CMP on the location of remains...”

25. Again, at the 1340th meeting in March 2019 at which Turkey did not participate, the Deputies called upon the Turkish authorities, as at previous meetings, *“to.... provide the CMP proprio motu with any information from the relevant archives, including military archives, in their possession on burial sites and places of possible relocation of remains;...”*
26. The sparse information that is claimed in Turkey’s memorandum to have been provided to the Turkish Cypriot Member of the CMP, namely, remains found in “Sirinevler-Goceri” and access to aerial photos from 1974, cannot reasonably be deemed as sufficient to meet the repeated calls of the Deputies in their Decisions outlined above. As far as access to aerial photos from 1974 is concerned, the Committee is reminded that, in purporting once again to share all information at its disposal with the CMP, Turkey already stated, at the June 2018 meeting, that the ‘archives committee’ set up in the occupied areas in 2016, granted permission to the Office of the Turkish Cypriot Member of the CMP, to access aerial photos from 1974 in order to locate possible burial sites for excavation. As noted at the March 2019 meeting by the Republic of Cyprus, copies of these aerial photos were thereafter requested by the Office of the Greek Cypriot Member of the CMP, which, however, received only coordinates of ‘suspicious’ areas (notably, all such ‘suspicious’ areas excavated yielded no remains). This signifies Turkey’s ‘a la carte’ approach to the dissemination of information to the CMP, which cannot be deemed acceptable. Moreover, it is at the least, deeply unsatisfactory, that no other information whatsoever has been forthcoming.
27. The Deputies are therefore once again requested to call upon Turkey to fully disclose to the CMP, on a non-selective basis, all information in her possession from her relevant archives, and especially from her military archives, in order effectively to aid the work of the CMP in determining the fate of the missing persons.

Protection / safeguarding of burial sites

28. At the 1340th meeting in March 2019, the Republic of Cyprus once again brought to the Committee’s attention the CMP’s statement in its report entitled “Strategy 2017-2020”, 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”.

29. There can be no doubt that the intentional disturbance of burial sites and exhumation of human remains is a significant hindrance to the progress of the work of the CMP. It was determined by the CMP to have occurred in sites in the occupied areas of Cyprus, and to have been conducted with the use of heavy machinery and in an organized, systematic and deliberate manner with the intention of concealing evidence of crime. Examples include the relocation of the remains of at least 70 individuals from Askeia to a dumpsite, and the relocation of remains in the Bogazi military area, where few skeletal elements of two individuals were found in bags, with the Turkish army refusing to inform the CMP about the primary location of the grave.¹³ Furthermore, a relocation of 31 soldiers was established in Kornokipos and of 17 civilians in Strongilos. Another example is the disturbed burial place of 7 or 8 soldiers in the military area of Saint Hilarion, evidenced by the fact that only small skeletal elements were found.
30. Accordingly, the Republic of Cyprus has in the past insisted upon the fulfilment of Turkey's obligation to conduct effective investigations 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 on 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.
31. No information and/or explanations relevant to this particular issue have been provided by Turkey in its memorandum for this meeting. This can only indicate that Turkey is not only inherently reluctant to assist the CMP in determining the fate of missing persons, but that she is also deliberately obstructing such work, since 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 more bone samples have to be sent for genetic analysis to laboratories, and thus to a waste of valuable resources and time. This becomes all the more evident at burial locations within military zones

¹³ Relocation of remains has also been established at sites in Afaneia, Sinta, Ayios Ilarionas and Kornokipos, and as late as 2017, in Voni and Dikomo.

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.

32. Even though the Republic of Cyprus has repeatedly 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 safeguard these locations has been put in place to date.

C. INVESTIGATIONS BY THE MPU

33. Turkey's compliance with the Court's main judgment also entails the fulfilment of her obligation effectively to investigate the circumstances surrounding the disappearances of the missing persons, and to collect and assess evidence with a view to prosecution, a task which she has entrusted to the 'Missing Persons Unit' ('MPU') in the occupied areas of Cyprus. As the Court has noted several times, that is a matter entirely distinct from the work and mandate of the CMP: see para. 13 above.

34. With its Decision at its 1340th meeting in March 2019, in which Turkey did not participate, the Deputies reiterated *"their call to the Turkish authorities to ensure the effectiveness of the Missing Persons Unit (MPU) investigations, as well as their rapid finalisation, and invited the Turkish authorities to continue to transmit to the Committee information on the progress of the investigations and the conclusions of the final reports, in particular in the cases relating to Savvas Apostolides and Andreas Varnava; reiterated their request to the Turkish authorities to provide more details about the additional resources made available to the MPU;..."*

35. In order to assess whether the MPU is effective and indeed the progress and conduct of the investigations, the Committee must be provided with full and detailed information. As will be explained below, the data provided by Turkey in its memo for this meeting do not provide a basis on which to reach concrete conclusions on the matter. According to

those data, 685¹⁴ files have been transmitted so far by the CMP to the MPU. 439 of these files are said to have been finalised by the MPU and transmitted to the 'Attorney General' in the occupied areas, whose examination of 306 files – well under half of the total – is said to have been concluded.

36. But two striking and uncontroverted facts stand out. First, from the investigations conducted so far, ***not even a single case has led to any prosecution proceedings***. Taken on its own, this fact provides sufficient grounds to reject any of Turkey's arguments as to the effectiveness of the investigations conducted so far.

37. Secondly, ***the content and conclusions of the investigations finalised so far have not been disclosed to the Committee***, save in four cases¹⁵ which, in terms of results, correspond to not even one percent of the 685 files transmitted by the CMP to the MPU so far. Progress, therefore, cannot reasonably be noted by the Deputies.

38. Furthermore, despite the Deputies Decision of March 2019 by which Turkey was invited to present information on the progress of the investigations and the conclusions of the final reports in the cases relating to Savvas Apostolides and Andreas Varnava in particular, nine months later, the investigation on Savvas Apostolides has still not yet been completed. Turkey has provided the Committee with a summary of the File Report for the case of Andreas Varnava as Annex A to its memorandum for this meeting. However the actual File Report, transmitted to the relatives of Andreas Varnava on 11 March 2019, was transmitted only in the Turkish language, which appears symptomatic of Turkey's grudging and half-hearted approach to investigations.

39. From all of the above, it is evident that concrete conclusions cannot be reached as to the effectiveness of the MPU or that it is producing satisfactory outcomes. Any additional resources provided to the MPU, such as those referred to in Turkey's memo for this meeting, are insufficient to address the lack of progress in the investigations and more importantly, the lack of a genuine and *bona fide* approach to their conduct.

¹⁴ The Republic brings to the attention of the Committee, that the reference in the Notes to the Agenda for this meeting that "the unit has opened 685 criminal investigations on the basis of the files transmitted by the CMP", seems to be inaccurate. The relevant reference in the Memo submitted by Turkey for this meeting, is that "to this day, CMP conveyed 685 case files to the MPU." (at p.5, para. 26).

¹⁵ Two of these four investigations concern Savvas Hadjipantelli and Andreas Varnava.

CONCLUSIONS

40. For the reasons stated above, and in the absence of any steps taken by Turkey in advance of the 1362nd 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 places of possible relocation of 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.