

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 08/02/2021

DH-DD(2021)150

Document distributed under the sole responsibility of its author, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1398th meeting (March 2021) (DH)

Communication from an NGO (Truth Now) (26/01/2021) in the cases VARNAVA AND OTHERS v. Turkey and CYPRUS v. Turkey (Applications No. 16064/90 and No. 25781/94).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

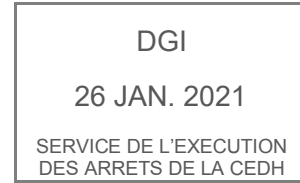
* * * * *

Document distribué sous la seule responsabilité de son auteur, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1398^e réunion (mars 2021) (DH)

Communication d'une ONG (Truth Now) (26/01/2021) concernant les affaires VARNAVA ET AUTRES c. Turquie et CHYPRE c. Turquie (Requêtes n° 16064/90 et n° 25781/94) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

26 January 2021

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by the non-governmental organization TRUTH NOW

Re: Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 - Varnava and Others v. Turkey, Judgment dated 18 September 2009 and Application no. 25781/94 - Cyprus v. Turkey, Grand Chamber Judgment dated 12 May 2014

1. Case Description

a) Application nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90 - Varnava and Others v. Turkey, Judgment dated 18 September 2009 (hereinafter the “Varnava Case”)

In this case, the Court found continuing violations of Article 2 on account of the failure of the Respondent to provide for an effective investigation aimed at clarifying the fate of the nine men who went missing in 1974, of Article 3 due to the silence of the authorities of the Respondent in face of the real concerns of the relatives which could only be categorised as inhuman treatment and due the length of time over which the ordeal of the relatives has been dragged out and the attitude of official indifference in face of their acute anxiety to know the fate of their close family members which revealed a situation attaining the requisite level of severity for an Article 3 violation, and of Article 5 for the failure of the Respondent to conduct the requisite investigation. Finally, it ordered the Respondent Turkish Government to take measures under Article 46 of the Convention which imposes on the Respondent the legal obligation to put an end to the breach and make reparation for its consequences and to pay the sum of EUR 12,000 for non-pecuniary damage to each of the nine applicants, to be held by the heirs where the applicant has deceased.

Truth Now NGO

The Chanteclair House · 2 Sophoulis Street · 9th (Top) Floor · 1096 Nicosia · Cyprus · www.truthnowcyprus.org
Postal Address: P O Box 21645 · 1511 Nicosia · Tel: +357 22676060 · Fax: +00357 22676061 · Email: info@ldlaw.com.cy



is, among other, lobbying for the ratification of the International Convention for the Protection of All Persons against Enforced Disappearance.

Our organisation believes that Truth is owed to the victims, their relatives and to the society as a whole, irrespective of the ethnic origin of the persons involved.

3. Individual and General Measures allegedly taken by The Turkish Government

In the Memorandum sent by the Turkish authorities dated 9.11.2020, which we have attached for your easy reference, the Turkish Government referred to the measures allegedly adopted in relation to the abovementioned cases.

(a) Individual Measures

The Turkish Government has allegedly adopted individual measures in relation to the missing persons in the *Varnava* case. Specifically, it mentions that the investigation of Andreas Varnava and Savvas Hadjipanteli had been completed and that since the latest CM(DH), the MPU's investigation concerning Savvas Apostolides has been completed and the file is currently before the Attorney-General's Office for final review. The Memorandum also mentions that the remaining six missing persons in the Varnava case are in the first phase of investigations vested in the CMP.

It is clear from the above that the individual measures allegedly taken by the Turkish Government are heavily dependent on the mechanisms encompassed in more general measures, specifically as regards the work of the Attorney-General's Office, the MPU and CMP, which, as will be discussed below, are inherently problematic.

Additionally, the Respondent unjustifiably insists on their denial to pay the awarded compensation to the relatives of the missing persons.

(b) General Measures

Although the general measures allegedly implemented by the Turkish Government are discussed in the Memorandum, any reference made to any available mechanisms, such as the Archive Committee, the MPU or the Attorney-General's Office is made in abstract, without any details as to the mandate of those authorities or the result of their work. The Memorandum also blatantly ignores the fact that these allegedly general measures, which form the foundation of any successful implementation of individual measures, are plagued with inefficiency, a lack of transparency and inaccessibility/ineffectiveness. More specifically, the issues surrounding the functioning of both the MPU and CPU are analysed below.



4. Inadequacy of Individual and General Measures Taken by The Turkish Government

(a) Missing Persons Unit (MPU):

According to Turkey's submissions before the CoM of the CoE, the standard procedure between the CMP and MPU is that the CMP conveys files of identified persons to the MPU, so that the MPU conducts criminal investigations, compiling all relevant evidence, documentation and other material associated with the case. According to paragraph 32 and 33 of the Memorandum, numerous attempts were allegedly made by the MPU to reach out to the families of Greek Cypriot missing persons for information but to no avail, with very few families participating in the investigations and appearing before the MPU. However, we consider this a bad faith attempt of the Turkish Authorities to hide their unwillingness to address the matter, since there are obviously ways to contact the relatives of missing persons directly. Furthermore, it is questionable whether MPU is actually accessible to Greek Cypriot relatives, since the Unit exclusively uses the Turkish language which is not spoken or understood by the majority of the Greek Cypriot community. It is thus clear that even the simplest of steps, such as contacting the families of Greek Cypriot missing persons in a language that they will understand, are not taken by the MPU. The conclusion which follows therefore is that the investigations the MPU conducts are defective, in light of the absence of potentially valuable information which the Greek Cypriot families could have provided, had the MPU made better efforts to access it. In any event it fails to comply with international standards providing for the engagement of the relatives in this process.

Considering the apparent lack of communication on the side of the Turkish authorities to Greek Cypriot families of missing persons, it is also questionable to what extent the alleged 'File Reports' compiled on missing persons are actually conveyed to the Greek Cypriot relatives of identified missing persons, as mentioned in paragraph 37 of the Memorandum, and even if they had been forwarded to them, to what extent they were actually presented in a comprehensive and understandable format. Indeed, according to our Organisation's investigations, we have yet to trace any relevant report conducted by the MPU on a relevant missing person, since as per our information, these are not available to the public.

The above therefore is revelatory as to the issue of the lack of effectiveness and transparency of the MPU. Unfortunately, these issues are also apparent as regards the work of the CMP.

(b) Committee on Missing Persons (CMP)

The CMP is referred to at length by the Turkish authorities in the Memorandum. However, we regret to repeat that CMP has not been considered an adequate and effective remedy as declared by the ECtHR and set out below the relevant paragraphs



nos 189, 192, 193 from the Varnava Case, as well as to note that delays, a lack of transparency and an absence of dialogue are pervading themes of the CMP's work processes.

"189. 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 the 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 a first step in the investigative process, they do not exhaust the obligation under Article 2.

*...
192. The Court finds no indication that the CMP is going beyond its limited terms of reference to play any role in 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. Nor is any other body or authority taking on that role. It may be that investigations would prove inconclusive, or insufficient evidence would be available. However, that outcome is not inevitable even at this late stage and the respondent Government cannot be absolved from making the requisite efforts. By way of example, the Court notes that in the context of Northern Ireland the authorities have provided for investigative bodies (variously, the Serious Crimes Review Team and Historical Enquiry Team) to review the files on past sectarian murders and unsolved killings and to assess the availability of any new evidence and the feasibility of further investigative measures; in cases before the Court, these measures were found, given the time that had elapsed, to have been adequate in the particular circumstances (see Brecknell, cited above, §§ 71, 75 and 79-81). It cannot therefore be said that there is nothing further that could be done.*

193. It may be that both sides in this conflict prefer not to attempt to bring out to the light of day the reprisals, extrajudicial killings and massacres that took place or to identify those among their own forces and citizens who were implicated. It may be that they prefer a "politically sensitive" approach to the missing persons problem and that the CMP with its limited remit was the only solution which could be agreed under the brokerage of the United Nations. That can have no bearing on the application of the provisions of the Convention."

With the CMP's Terms of Reference (ToR) as a starting point, one can see that the CMP at its very core suffers from various issues. For example, as per Term 3, 'No other persons will participate in the deliberations or investigative work of the committee. No person directly involved with the issue of missing persons may be appointed as staff assistant'. The result is that relatives of missing persons are not given an official participatory role in investigations. It is thus no surprise that in a recent study conducted by the ICRC and CMP, 57% of interviewees expressed a need for greater official acknowledgement of their ongoing plight in their search for their missing family members.³ This exclusionary term of reference ignores both the possibly valuable role

³ Committee of Missing Persons (CMP) and International Committee of the Red Cross (ICRC), 'Needs of Families of Missing Persons in Cyprus', April 2019, page 3



that relatives could play in the investigation, as well as the potential to increase a sense of trust and dialogue between the CMP and missing persons' family members.

Term 11 of the CMP's ToR also states that the 'committee will not attribute responsibility for the deaths of any missing persons or make findings as to cause of such deaths'. This is revelatory of the failure of the CMP to protect relatives' right to truth in a holistic and effective way, since families are only left with the bare remains of their loved ones, and nothing beyond that,⁴ and as such they have no way of knowing the circumstances of death which could have offered them some solace. Instead, even at the end of the CMP's process at the Identification and Return of Remains phase, families are left with uncertainty as to the specific details of the fate of their missing relatives. In addition to this, a recent article has revealed that the CMP also fails to mention the source of the information leading to the discovery of remains.⁵

As a result of the above, namely the lack of transparency in most of its processes and the lack of easy access to the information held, the CMP's work to some extent has been counter-productive, as it has engendered feelings of mistrust and detachment, rather than encouraging any reconciliatory potential. This is compounded by an absence of psychological support to the families, which is has proven to be a significant need for a majority of interviewees in a recent study carried out,⁶ many of whom have had to live with uncertainty as to the whereabouts of their relatives for 30 to 60 years as a result of delays in CMP proceedings.⁷ Such delays are also worrying in light of the danger that, as time passes, key witnesses are dying, possible excavation sites are being built on, and generations directly affected by disappearances will soon die leaving no one to continue the search for their family members.⁸

A lack of cooperation within the CMP's processes is also apparent. For example, during the Identification and Return of Remains phase, it has been reported that during laboratory work there is a lack of cooperation between the two teams, one for each community. Arguably, having two separate teams who in practice do not cooperate rather than one united team goes against the bi-communal character of the CMP and impedes the reconciliatory purpose which forms the foundation of this process.

Furthermore, according to Term 6 of the ToR, all parties concerned will cooperate with the committee to ensure access throughout the island for its investigative work. Island-

⁴ Nasia Hadjigeorgiou, 'The Missing Truth in Cyprus' (Justiceinfo.net) 13 October 2020
<<https://www.justiceinfo.net/en/45647-missing-truth-cyprus.html>>

⁵ Nasia Hadjigeorgiou, 'The Missing Truth in Cyprus' (Justiceinfo.net) 13 October 2020
<<https://www.justiceinfo.net/en/45647-missing-truth-cyprus.html>>

⁶ Committee of Missing Persons (CMP) and International Committee of the Red Cross (ICRC), 'Needs of Families of Missing Persons in Cyprus', April 2019, page 3

⁷ Nasia Hadjigeorgiou, 'The Missing Truth in Cyprus' (Justiceinfo.net) 13 October 2020
<<https://www.justiceinfo.net/en/45647-missing-truth-cyprus.html>>

⁸ Committee of Missing Persons (CMP) and International Committee of the Red Cross (ICRC), 'Needs of Families of Missing Persons in Cyprus', April 2019, page 10



wide access is thus reliant of the good faith of all parties, something which, especially considering the constraints Turkey has imposed over the years, is precarious in itself and thus unhindered island access is certainly not guaranteed.

Lastly, it is also noteworthy that the CMP fails to undertake reconciliation-promoting activities, such as the publishing of its findings or the commemoration of the missing. This is largely due to its ToR, which are by their nature rather restrictive.⁹

It is thus apparent that the Turkish Government in its Memorandum unacceptably relies on the CMP in its current state for the purpose of being absolved of its obligations, instead of focusing on how to reform both the CMP and other mechanisms to improve their effectiveness and thus comply with its obligations under the abovementioned Judgments.

4. Our Recommendations

We set out below certain from our recommendations, which could be used by the Respondent in the measures to be taken by the latter for the purpose of complying with the relevant Judgments and which have been reported in our relatively recent publication entitled "Missing Persons in Cyprus: Observations from the past and recommendations for the future", written by Natasa Iakovou and Nadia Kornioti, on behalf of Truth Now, in collaboration with PRIO Cyprus Centre. You can find the Report below

<http://www.truthnowcyprus.org/index.php/en/announcements/item/94-missing-persons-in-cyprus-observations-from-the-past-and-recommendations-for-the-future>

(a) Reform of the CMP

As mentioned above, the CMP faces significant practical and technical difficulties which negatively affect its efficiency and its compliance with the standards of an effective remedy. Thus, if the Respondent will insist to invoke the work of CMP as a basis to be absolved from its obligations, it should at least take steps towards its improvement.

One of the main obstacles in the effectiveness of the CMP, is their operation under confidentiality, which leads to lack of transparency. As we consider transparency as an important criterion for the effectiveness of the CMP, one of our key recommendations is the publication of a comprehensive Annual Report by the CMP which would significantly

⁹ Nasia Hadjigeorgiou, 'The Missing Truth in Cyprus' (Justiceinfo.net) 13 October 2020
<<https://www.justiceinfo.net/en/45647-missing-truth-cyprus.html>>



improve the exchange of information among all parties involved and enhance people's openness towards the sharing of information with the CMP investigators.

Given the fact that the CMP constitutes the primary mechanism dealing with missing persons, it is necessary to ensure not only that they work with transparency but also that the CMP remains consistent with the evolving societal demands. Thus, we consider the transformation of the CMP into a Truth Commission, through the amendment of its terms of reference, a significant step forward in complying with the standards of an effective remedy.

Our suggestion includes, inter alia, the expansion of the mandate of the CMP in order to gain easy access throughout the island for conducting relevant investigations and also the attribution of responsibility for establishing the cause of death of the missing persons, without however attributing any responsibility for their deaths. We consider that this will encourage interested parties to provide information to the CMP on the one hand and to address the need of relatives to know the cause of death of their loved ones on the other, within the framework of the family members' Right to Truth.

It is relevant to also refer to a proposal of amendment of the Terms of Reference of CMP supported by our organization, which may be found in the below link and which could be submitted for approval by the General Assembly of the United Nations.

<http://www.truthnowcyprus.org/index.php/en/a-truth-commission-for-cyprus/item/27-proposal-for-amending-the-terms-of-reference-of-cmp>

It is generally recommended that any mechanism dealing with the matter of missing persons should act within reasonable timeframe and have the character of a "living instrument", meaning that, in the face of the nature of the problem it purports to address, it will be capable to adapt and evolve with the needs of the society.

(b) Additional Mechanisms to support the CMP

It is also important for the work of the CMP, either working on the basis of its current mandate or as a Truth Commission, to be supported and supplemented effectively by other mechanisms in order to have all the adequate powers and resources to efficiently fulfill its role.

It is thus our suggestion that the Respondent should promote the establishment of an independent investigatory body with a clear mandate as to the effective investigation of disappearances in Cyprus. This investigatory body could collaborate with the CMP and



with the authorities of the Respondent and the Republic of Cyprus and will have easy access throughout the island for conducting investigations. This body will also be responsible for meeting family members accompanied by the CMP, explain the whole procedure and inform them of the progress of investigation of their loved ones. This will thus strengthen the involvement of family members in the investigation procedure.

A group of psychologists, responsible for providing psychological support to the family members, should also work in parallel with the CMP so as to address the lack of psychological support which is an apparent deficiency in the work of the CMP.

(c) Transparency and Accessibility to all the available archives

The Right to Information is well linked to the Right to Truth. It is noteworthy that the family members' "Need to Know" about their loved one's fate seems to be their most important need according to a "Family Needs Assessment", an interview which took place in Cyprus between October 2018 and April 2019. Particularly, 91% of the family members interviewed said that "their first need is to receive an answer regarding their loved one's fate: whether they are alive or dead and in the case of the latter, to locate, identify and receive the remains of their missing relatives to be able to bury them"¹⁰.

We believe that full transparency from all the relevant bodies will enhance exchange of information between them and keep family members informed about the investigation procedures and the fate of their missing relatives. Thus, an open and constructive dialogue involving the relatives of the missing persons, the civil society and the official authorities should be initiated in order to encourage a demand for accountability for earlier actions and inactions in relation to the missing persons in Cyprus.

The Respondent owes to put in place and present to the Committee the necessary legal framework to allow for the fulfilment of their obligation to preserve relevant archives. In this context, transparency and accessibility to archived material should also be guaranteed, in accordance to society's Right to Know and the state's Duty to Remember.

(d) Right to Reparation

It is recommended that victims, namely the relatives and society, are effectively afforded the Right to Reparation. To this effect, apart from the provision of appropriate compensation to

¹⁰ Committee of Missing Persons (CMP) and International Committee of the Red Cross (ICRC), 'Needs of Families of Missing Persons in Cyprus', April 2019, page 3



all relatives, the Respondent should proceed with formal recognition of their responsibilities through official declarations, including apologies.

Furthermore, the fulfillment of obligations arising from the Right to Reparation requires, inter alia, the effective and within reasonable timeframe investigation of missing persons cases, the ability of the investigations to lead to the identification of those responsible, the establishment of the cause of death, the finding their loved one's remains and burying them according to their respective traditions.

Within this context, it is also recommended the erection of monuments which would not only aim to honour and restore the dignity of all victims but would also serve as a monument of remembrance. A monument for society not to forget, but to confront its past, underlining the duty to guarantee the non-recurrence of such events.

It is apparent that the Respondent continuously fails to comply with its obligations under the Judgments under review and the above could form some ideas and guidance for the Respondent's urgent need to take the appropriate measures to comply with its obligations and put an end to the ongoing inhuman injustice.

5. Infringement proceedings under Article 46 (4) of the ECHR

Despite the adoption of two interim resolutions in 2013 and 2014 regarding Varnava case, and the communication of the Secretary General with the Ministry of Foreign Affairs of Turkey in 2015, urging the Respondent Government to pay the just satisfaction awarded by the ECtHR together with the default interest, the Respondent State has failed to comply with its obligations. The Respondent State did not participate in the discussions in December 2018 and March 2019, with the Committee of Ministers expressing their regret. The Respondent State has also failed to pay the just satisfaction awarded in Cyprus v. Turkey case and the General Measures taken regarding missing persons in Cyprus are not satisfactory for the fulfillment of the Respondent's obligations under the abovementioned Judgements.

Given the continuing failure and refusal of the Respondent Government to comply with the abovementioned Judgments and its obligations under Article 46(1) of the ECHR, we would like to suggest the adoption of an Interim Resolution by the Committee of Ministers and the initiation of infringement proceedings under Article 46(4) of the ECHR.



6. Conclusion and Summary of our Recommendations

It is clear therefore that the measures the Turkish authorities rely upon to fulfil their obligations are neither sufficient nor effective. In view of the information presented above and having analysed the inadequacy of the individual and general measures allegedly taken by the Respondent Government, we presented our key recommendations which can be summarised as follows:

- a. Promote the reform of the CMP mandate and its transformation into a Truth Commission;
- b. Establishment of Effective Additional Mechanisms to support the CMP;
- c. Strengthening of Transparency and Accessibility to all the available archives by, among other, putting in place the necessary legal framework;
- d. Fulfilment of the Right to Reparation, by complying with its obligation for the awarded by the ECtHR compensation and additionally by proceeding with formal apologies and erection of monuments of remembrance.

Last but not least, given the ongoing apparent unwillingness of the Respondent to comply with its obligations under the abovementioned Judgments we have suggested the initiation of infringement proceedings under Article 46 (4) of the ECHR.

We remain at your disposal for any clarifications and would be grateful if these matters were brought to the attention of the Members of the Committee of Ministers, prior to their forthcoming meeting, pursuant to Rule 9 of its Rules.

Thanking you in advance for your cooperation.

Yours sincerely,

Natasa Iakovou
For and on behalf of Truth Now NGO

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 10/11/2020

DH-DD(2020)1003

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1390th meeting (1-3 December 2020) (DH)

Communication from the Turkish authorities (09/11/2020) in the case of Cyprus v. Turkey (Application No. 25781/94)

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.

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1390^e réunion (1-3 décembre 2020) (DH)

Communication des autorités turques (09/11/2020) relative à l'affaire Chypre c. Turquie (requête n° 25781/94) **[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.

DGI

09 NOV. 2020

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

MEMORANDUM
Missing persons cluster of “Cyprus v. Turkey”
and Varnava and others v. Turkey
1390th meeting of the Ministers’ Deputies (CM-DH)
1-3 December 2020

Introduction

1. In December 2020, as part of its examination of the “Cyprus v. Turkey”¹ and Varnava² cases, the Committee of Ministers meeting in human rights format (CM(DH) meeting) will take up the issue of “missing persons”.
2. The measures in place within the framework of the “missing persons” cluster of “Cyprus v. Turkey” case are also the general measures for the Varnava case. CM(DH) will also be informed about the developments on the implementation of the individual measures with respect to the Varnava case.
3. The effective investigations the Turkish side has been conducting take place in two phases; the first phase has been entrusted to the Committee on Missing Persons in Cyprus (CMP), followed by the second phase which the Missing Persons Unit (MPU) of the Police Force and the Attorney-General’s Office of the Turkish Republic of Northern Cyprus (TRNC) conduct.

Latest CM(DH) decision welcoming the developments

4. This issue has been on the agenda of the CM(DH) for over a decade now where CH(DH) has been noting the developments in its numerous decisions. In its most recent examination that took place in December 2019, CM(DH)
 - a. **welcomed** access given **to the CMP** with respect to **30 additional suspected burial sites in the military areas** in the TRNC, with the timing of excavations to be decided by the CMP and encouraged the Turkish side to continue with this approach and to provide the CMP with unhindered access to all areas which could contain the remains of missing persons as well as to advance the efforts to provide the CMP with all information at their disposal,
 - b. **noted with interest** the information on the **progress of the investigations conducted by the MPU, the conclusions of the final report in the case of Andreas Varnava and the additional resources granted to the MPU**, and asked for continuation of transmission of information on the progress of the investigations and their outcome, in particular in the case of Savvas Apostolides.

Update on the effective implementation of the measures

5. COVID-19 pandemic also affected the ongoing work concerning missing persons in Cyprus. In fact, the interruptions on the crossing of people in Cyprus began on 28 February

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.

2020 even before the outbreak of the COVID-19 epidemic in Cyprus when the Greek Cypriot side unilaterally closed four crossing points between the two sides. The initial COVID-19 cases, which surfaced in mid-March led to further measures being put in place, including the closing of two additional crossing points. Restrictive measures such as partial lockdowns, school closures, curfews, and cancellation of passenger flights were imposed from March and, by month's end, the few remaining open crossings were rendered essentially impassable due to quarantine requirements put in place by both sides. Although public service could be partly resumed in the TRNC by 18 May 2020, regulations and restrictions in most sectors remained in place, including in the military. The restrictions imposed on crossing of many foreigners from the South by the Greek Cypriot side continues to this day, while the TRNC authorities have in place quarantine requirements and certain health-related checks for people arriving the country.

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

6. As it should be recalled, 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. CMP is delivering this mandate primarily through the project on the Exhumation, Identification and Return of Remains of Missing Persons in Cyprus launched in 2006. As part of the project, CMP provides information to the families about the fate of their missing relatives and gives them the remains for a proper burial. It was in the case of *Varnava* where 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 doing its part in providing the CMP with all the necessary assistance to ensure CMP continues to achieve tangible results as quickly as possible.
8. The operations of the CMP, however, were also interrupted due to the COVID-19 pandemic. After a period of non-activity, on 27 March 2020, CMP members resumed their weekly meetings online and the investigation teams continued their archival work to locate possible burial places for excavation to be ready when the bi-communal teams resume their activities. CMP's remaining work continued to be on hold due to the outbreak as bi-communal teams could not work on the ground. CMP resumed its bi-communal activities on 1 July 2020 after the partial lifting of COVID-19 related restrictions on crossing points and its Anthropological Laboratory resumed its analyses and identification of missing persons on 22 June 2020.⁴ They were interrupted yet again when a CMP staff member has tested positive for COVID-19. In its announcement on 20 October 2020, CMP informed the public that its bi-communal operations at the CMP Anthropological Laboratory and at field excavation sites across the island were ongoing, nonetheless, effective immediately CMP's in-person meetings were suspended for one month and are replaced by online meetings during this period.⁵

A. New Information to locate places of burial:

9. All information at the disposal of the Turkish side about possible burial sites have been provided to the CMP as per the 1997 Agreement between the Turkish Cypriot and Greek

³ *Varnava*, § 189.

⁴ <http://www.cmp-cyprus.org/press-releases/cmp-resumes-full-operations> and <http://www.cmp-cyprus.org/press-releases/cmp-confirms-operations-are-running-normally>

⁵ <http://www.cmp-cyprus.org/press-releases/cmp-reports-first-case-covid-19>

Cypriot Leaders in order to assist the CMP **to locate the bodies of missing persons**. This fact has been reflected in the report of the United Nations Secretary-General in 2000.⁶

10. Thereafter, any new information that comes to the disposal of the Turkish side about possible burial sites and other places where remains might be found⁷ is shared with CMP to assist its work.
11. As far as documentary evidence is concerned, it was years after CMP implemented the 2006 Project that CMP decided to ask for documentary evidence 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 Greek Cypriot side and Greece, the Turkish side was one of those stakeholders that were directed specific questions.
12. The Archive Committee established in the TRNC in 2016 has the task to examine the relevant archives for the information requested by the CMP regarding the locations of missing persons. As it should be recalled, the Archive Committee comprises military authorities, police authorities, experts from the Ministry of Health and National Archives as well as other relevant units of the TRNC Government. The Committee has been actively cooperating to respond to the information requested by the CMP. Documentary evidence derived from the archives of the Turkish side is shared with the Turkish Cypriot Member's Office, as per the agreement of the Three Members of the CMP.
13. On 29 November 2019, new members were appointed to the Archive Committee. Also, the Archive Committee responded to the request for archival information submitted by the Turkish Cypriot Member Office of the CMP about the repair works conducted in a building located in the military area.
14. The investigation unit established in the TRNC Presidency to support the Turkish Cypriot Member's Office investigation team in its efforts to locate burial sites of missing persons has continued its work.
15. The Turkish Cypriot Member's Office investigation team has also been given access to the various archives, including those of the TRNC Presidency and former President Denktaş etc.
16. CMP's archives research team also conducted research visits to United Nations headquarters in New York in July, August and October 2019, and completed its review of

⁶ Report of the UN Secretary-General to the Security Council, S/2000/1138/1 December 2000, para. 14.

⁷ 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.

the archives of the International Committee of the Red Cross (ICRC) in Geneva in September 2019.⁸

17. The primary source of information for the CMP has been witnesses in the Cyprus context where the confidentiality granted to the informants, coupled with the undertaking of the Attorney-General Offices on both sides not to prosecute them for coming forward with possible incriminating evidence have contributed and encouraged people with information on possible burial sites of missing persons to come forward and share the information they have with the CMP. To that end, the hotline established continues to be in place as part of the public outreach of CMP to ask Turkish Cypriots to come forward and assist the CMP through its hotline.

B. Access of CMP:

18. 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.
19. In the North, until 31 October 2020, a total of 1112 exhumations were conducted by the CMP, 1048 in the civilian areas and 64 in the military areas.
20. 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 also welcomed by the CM(DH).⁹
21. Until 31 October 2020, CMP exhumed 1189 missing persons out of 2002 missing as of 2006, both Turkish Cypriot and Greek Cypriot.¹⁰
22. Following the discovery of the remains, CMP conducts identification through scientific means, namely through genetic testing and matching.
23. According to the statistics published by CMP, as of 31 October 2020, 991 missing persons have been identified by the CMP; 282 Turkish Cypriot and 709 Greek Cypriot. CMP also identified 185 individuals who were not on its official missing persons list.¹¹
24. In *Charalambous*, ECtHR considered CMP's function to **discover and identify the missing persons as effective**¹² 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.¹³
25. In the resolution it has adopted on 28 July 2020, the UN Security Council "[c]ommend[ed] the work of the Committee on Missing Persons, and call[ed] upon all parties expeditiously

⁸ UN General Assembly, Human Rights Council, A/HRC/43/33, Forty-third session, 31 January 2020, para. 20.

⁹ CM/Del/Dec(2019)1362/H46-30.

¹⁰ <http://www.cmp-cyprus.org/content/facts-and-figures>

¹¹ <http://www.cmp-cyprus.org/content/facts-and-figures>

¹² *Charalambous and Others v. Turkey* (dec.), nos. 46744/07 *et al.*, 1 June 2010, §60.

¹³ *Charalambous*, §60.

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.”¹⁴

26. The Turkish side has been doing its part to ensure CMP continues to function effectively, as outlined above. It is imperative that the Greek Cypriot side as well as Greece, also part with the relevant documentary evidence in their possession for the period of 1963-64 and 1974 when the disappearances took place and give access to their military camps and military areas under their control. In this respect, 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 were last seen at police checkpoints so as to ensure the continuation of the effectiveness of the CMP.
27. On 23 December 2019, the UN Committee against Torture also called upon the Greek Cypriot side to, *inter alia*, “[c]ontinue to provide support to the Committee on Missing Persons in Cyprus and take further steps to investigate all outstanding cases of all missing persons in an effective, transparent, independent and impartial manner” and to “[e]nsure the right to truth regarding the circumstances of disappearance, including access to information on the progress and results of investigations and participation in relevant proceedings”.¹⁵
28. In order to ensure the continuation of the effectiveness of the CMP, therefore, all relevant parties should fulfill their respective 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.¹⁶

C. Other Support to the CMP:

29. 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 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 August 2020, increasing the total amount of her contribution to EUR 1,082,500. The EU's 2020 contributions in the amount of 2,600,000 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 28,100,000 EUR.

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

¹⁴ S/RES/2537 (2020), dated 28 July 2020, operative para. 10.

¹⁵ “Concluding observations on the fifth periodic report of Cyprus”, Committee against Torture, CAT/C/CYP/CO/5, para. 41(a) and (b), 23 December 2019.

¹⁶ 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”.

A. Progress in the Investigations:

30. After CMP completes its work, i.e. upon the conclusion of the “first step in the investigative process” by the CMP, MPU begins its work. MPU has been given the tasks described by the ECtHR 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*”.¹⁷
31. In other words, 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 700 case files to the MPU. The case files include basic information about the identity of the missing person and initial information about the disappearance. CMP’s confidentiality requirements permitted the sharing of the case files only, as CMP could only share items such as personal belongings and other relevant information with the families only.
32. 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.
33. 442 Greek Cypriot missing persons relatives were specifically identified from their applications before the European Court of Human Rights and were invited to the MPU, only 24 Greek Cypriots coming to the Police Headquarters. Even fewer, namely 15, agreed to give written statements.
34. 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 605 witnesses. In other words, during this period marked by lockdowns and curfews, MPU managed to advance its work, interviewing some more people since the latest CM(DH) meeting in December 2019. Overall, MPU conducted 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.
35. MPU finalized 441 of cases concerning Greek Cypriot missing persons and forwarded them to the Attorney-General’s Office. As for the remaining files before the MPU, 207 files are in advance stages of investigation and 52 files are in earlier stages.

¹⁷ *Varnava*, § 192.

36. As it should be recalled, the Attorney-General's Office may either instruct MPU to conduct further investigation or if content with the investigation, may proceed with an analysis of 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 135 files that were forwarded to them by the MPU.
37. The File Reports which include the analysis of the Attorney-General's Office are then conveyed to those relatives of the missing persons who could be identified, explaining to them 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 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.
38. It preparing the File Reports, the case-law of the ECtHR is taken into account. There is not a single conclusion in the File Reports concluded 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.
39. Criminal investigations conducted by the MPU, under the guidance of the Attorney-General's Office, take the ECtHR case-law as the benchmark. Conclusions reached in completed investigations are not the yardstick to determine whether investigations have been conducted effectively.¹⁸

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

40. There were nine missing persons in the *Varnava* case, three of whom have been found and identified by the CMP.
41. The investigation of Andreas Varnava and Savvas Hadjipantelli had been completed and CM(DH) had been informed about these investigations. In its latest decision, CM(DH)

¹⁸ 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).

*“noted with interest the information provided ... on the conclusions of the final report in the case of Andreas Varnava”.*¹⁹

42. Since the latest CM(DH), the investigation of the MPU concerning Savvas Apostolides, another missing person in the *Varnava* case who has been identified by the CMP, has been completed and the file is now before the Attorney-General's Office for final review.
43. The remaining six missing persons in the *Varnava* case are in the first phase of investigations vested in the CMP.

Conclusion

44. As it can be seen above, COVID-19 pandemic has had its toll on the efforts concerning missing persons as well. Nevertheless, the Turkish side continued to do its part in ensuring the continuation of investigations into missing persons to the extent possible. The Turkish Cypriot continued assisting the CMP to ensure the continuation of its effectiveness as well as making sure the MPU under the guidance of the TRNC Attorney-General's Office continued to conduct effective investigations for those missing persons who have been identified by the CMP, as circumstances permitted.
45. In this respect, the Turkish side requests the Committee welcome
 - a. the continued 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
 - b. the effective investigations undertaken by the MPU and the Attorney-General's Office, and in particular the conclusion of the investigation of Savvas Apostolides by the MPU.

¹⁹ Para. 4, CM/Del/Dec(2019)1362/H46-30, 5 December 2019.