

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES

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DH-DD(2012)1012

Date: 30 October/octobre 2012

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: 1157 DH meeting (4-6 December 2012)

Item reference: Communication from the applicant's representative
(25/10/12) in the case of Varnava against Turkey
(Application No. 16064/90)

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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 : 1157 réunion DH (4-6 décembre 2012)

Référence du point : Communication du représentant du requérant relative à
l'affaire Varnava contre Turquie (requête n° 16064/90)
(**Anglais uniquement**).

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



LELLOS P. DEMETRIADES LAW OFFICE LLC

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HR4-8/139/EI

25 October 2012

Chairperson of the Ministers' Deputies
Committee of Ministers
Council of Europe
F-67075 Strasbourg, Cedex
France

VIA FAX & MAIL

Your Excellency

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

I take the liberty to write, further to my letter dated 25 November 2011, to ask for your assistance to bring about the execution of the abovementioned judgment which has become final more than three years ago and which because of the Respondent Government's delaying tactics, has not been executed so far.

It should be noted that in addition to the unpaid just satisfaction awarded, the Respondent Government has, so far, failed to carry out an effective investigation in relation to the missing persons in issue.

In an effort to assist the Respondent Government in devising individual measures, I have prepared the attached amendments to the terms of reference of the Committee on Missing Persons in Cyprus (CMP) in an effort to upgrade same.

In particular, the amendment of term:

- (1) allows the possibility of an upgrade,
- (3) reflects the reality,
- (4) ensures access to the whole island,
- (11) allows for the investigation of the circumstances of the disappearance without attributing responsibility, and
- (12) in effect confirms the current situation.

My aim is for the CMP to operate as a Truth Commission on, perhaps, the model of South Africa. To achieve this the Council of Europe could take the lead and the United Nations could follow up with the amendments.



This proposal has already been forwarded to the Respondent Government, as per attached copy of letter dated 4 March 2011, but unfortunately no reply has been received.

I remain at your disposal should you require any clarifications.

I would be grateful if this matter is brought to the attention of the Members of the Committee of Ministers pursuant to Rule 9 of its Rules for the Supervision of the Execution of Judgments and the Respondent Government is requested to honour the said judgment.

Thanking you in advance for your cooperation.

Yours sincerely

Achilleas Demetriades

Enc

CC: Messrs
DG Human Rights & Legal Affairs
Directorate of Monitoring
Department for the Execution of ECHR Judgments
Council of Europe
F-67075 Strasbourg, Cedex
France

TERMS OF REFERENCE

Establishment of the Truth Committee on Missing Persons in Cyprus

1. A Truth committee on missing persons in Cyprus hereinafter "committee" will be formed immediately consisting of three members. The Greek Cypriot and Turkish Cypriot sides will each appoint one humanitarian person to the committee. The third member will be an official selected by the ICRC for that purpose with the agreement of both sides and appointed by the Secretary-General of the United Nations. The committee may take over and continue the work of the Committee on Missing Persons in Cyprus.
2. The decisions of the committee will be taken by consensus to the extent possible. In the event of disagreement between the representatives of the two sides, the third member shall consult both of them with a view to bringing their views together and reaching a consensus.
3. Each of the committee members can be assisted by up to two staff assistants as necessary. 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 committee will not may request outside expert assistance as well as funding.
4. The committee will not have a chairman, but the meetings will be directed by the members on a rotating basis for a period of one month's duration --- the first director will be the official of the ICRC, to be followed by the Turkish Cypriot member or the Greek Cypriot member, to be determined at the first meeting by lot.
5. The three members of the committee will meet immediately and will continue in regularly scheduled sessions for as long as required.
6. All parties concerned shall cooperate with allow the committee to ensure unhindered and immediate access throughout the island for the investigative work of the committee.
7. The committee shall look only into cases of persons reported missing in the intercommunal fightings as well as in the events of July 1974 and afterwards.
8. The order of investigation of cases will be decided by the committee, but it is agreed that the first investigative case will be put forward by the Turkish Cypriot member of the committee. This will be followed by a case put forward by the Greek Cypriot member. The investigations will rotate to the extent possible until all cases have been examined.
9. The committee's entire proceedings and findings will be strictly confidential. Any violation of this rule would place the work of the committee in jeopardy.
10. The committee will determine whether to issue public statements or reports without prejudice to paragraph 9.
11. The committee will not attempt to attribute responsibility for the deaths of any missing persons ~~or~~ but will make findings as to the circumstances and cause of such deaths.
12. No Every disinterment will take place under the aegis of this committee. ~~The committee may refer requests for disinterment to the ICRC for processing under its customary procedures.~~
13. The committee will use its best efforts to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are alive or dead, and in the latter case approximate time of the deaths.

23 April 1984

21 February 2011

Achilleas Demetriades



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HR4-8/136/EC

4 March 2011

H.E. Mr Daryal Batibay
Ambassador Extraordinary and
Plenipotentiary
Permanent Representative of Turkey
to the Council of Europe
23, boulevard de l'Orangerie
67000 Strasbourg
France

VIA FAX, EMAIL & MAIL

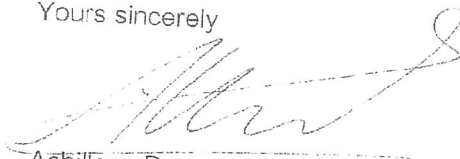
Your Excellency

Re: Truth Committee on Missing Persons in Cyprus

I refer to the abovementioned matter and would be grateful if you could forward the enclosed letter to H.E. Prof. Dr. Ahmet Davutoglu, Minister of Foreign Affairs.

Thanking you in advance for your cooperation.

Yours sincerely


Achilleas Demetriades

Enc



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HR4-8/134/EC

4 March 2011

H.E. Prof. Dr. Ahmet Davutoglu
Minister of Foreign Affairs
Ministry of Foreign Affairs
Ankara

Your Excellency

Re: Truth Committee on Missing Persons in Cyprus

I take the liberty of addressing this letter in an effort to address the issue of the Missing in Cyprus.

- (1) It is a fact that the Committee on Missing Persons (CMP) has carried out an exceptional task given, among other, the 1990 de facto immunity which has been granted to prospective witnesses.
- (2) Unfortunately, its terms of reference are narrow and it has already been characterized by the European Court of Human Rights, in the case of *Varnava v Turkey*, as not being capable of carrying out an effective investigation, within the meaning of Article 2 of the European Convention on Human Rights.
- (3) With the aim of upgrading same, I have prepared a draft, amending only five of its terms of reference, a copy of which I attach.
- (4) In particular, the amendment of term:
 - (1) allows the possibility of an upgrade,
 - (3) reflects the reality,
 - (4) ensures access to the whole island,
 - (11) allows for the investigation of the circumstances of the disappearance without attributing responsibility, and
 - (12) in effect confirms the current situation.
- (5) As it can be seen, these amendments constitute a balanced proposal which all parties concerned could accept, if indeed they want to solve this humanitarian problem.

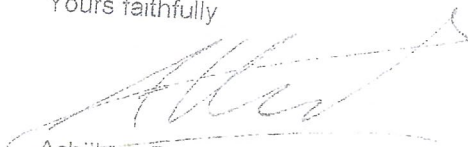


- (6) My purpose is for the CMP to operate as a Truth Commission on the model of South Africa, after it has been endorsed by the Council of Europe and adopted by the United Nations.

To this end, I would be grateful for your comments on the above, if possible, by the end of March 2011.

Thanking you in advance for your cooperation.

Yours faithfully



Achilleas Demetriades

Enc

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5. The three members of the committee will meet immediately and will continue in regularly scheduled sessions for as long as required.
6. All parties concerned shall ~~cooperate with~~ allow the committee to ~~ensure~~ unhindered and immediate access throughout the island for the investigative work of the committee.
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