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Date: 08/06/2015

DH-DD(2015)598

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: 1230 meeting (9-11 June 2015) (DH)

Item reference: Communication from a NGO (World Federation of Organisations of Missing Persons) (02/06/2015) in the case of Cyprus against Turkey (Application No. 25781/94) and reply from the Turkish authorities (08/06/2015)

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.

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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.

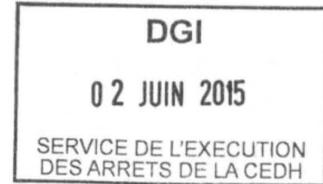
Réunion : 1230 réunion (9-11 juin 2015) (DH)

Référence du point : Communication d'une ONG (World Federation of Organisations of Missing Persons) (02/06/2015) dans l'affaire Chypre contre Turkey (Requête n° 25781/94) et réponse des autorités turques (**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.

DH-DD(2015)598 : Rule 9.2 communication from a NGO in Cyprus v. Turkey and reply from Turkey.

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WORLD FEDERATION OF ORGANISATIONS OF MISSING PERSONS' RELATIVES OF CYPRUS

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The Secretariat,
Committee of Ministers,
Council of Europe.

30th May 2015

Dear Sir/Madam

We are addressing this letter to you to express our great concern and great disappointment for the purposeful delay observed on the part of Turkey in fulfilling its obligation to take substantive compliance measures to end the violation of the human rights of the missing persons of Cyprus and their relatives.

The relatives of the missing persons of Cyprus, citizens of three Council of Europe Member States (Cyprus, Greece and the United Kingdom) bear a tragic burden for the last 41 years and continue to live in a prolonged state of anguish for the fate of their loved ones. We rest our hopes on your efforts to ensure that we will finally be justified and that our basic human rights will be restored. Parents and siblings of our missing have passed away without knowing what happened to their loved ones and many more families will probably never learn the fate of their relatives if the situation continues to develop as it has done till now.

The Committee on Missing Persons in Cyprus reports that only few individuals are exhumed each year and that remains found in only one in five of the excavated sites, most of those incomplete, because they were removed from their original place of burial. Unless reliable information is passed from Turkey to the CMP the problem will never completely be resolved.

We therefore appeal to you to help us bring an end to the inhuman treatment we have been enduring for more than four decades, by taking concrete steps towards ensuring that Turkey fulfils its obligation in fully accounting for the fate of our loved ones. This would also mean a real concrete support of Turkey to the ongoing CMP project, by giving full access to exhumation teams in military areas and by providing all critical information that could lead to the location of our missing.

Thanking you once again for your attention and understanding, we remain.

Nicos Serghides
President
**Organisation of Relatives
of Missing Persons in Cyprus**

Maria Kaimpourtzi
President
**Organisation of Relatives
of Missing Greeks in Cyprus**

Neoklis Neokleous
President
**Organisation of Relatives
of Missing Cypriots(UK)**



Comments to the Document from "World Federation of Organisations of Missing Persons' Relatives of Cyprus" dated 30 May 2015 by the Turkish Cypriot authorities

The Turkish Cypriot and Greek Cypriot authorities entrusted the Committee on Missing Persons (CMP) with the exclusive task to establish the fate and whereabouts of both Turkish Cypriot and Greek Cypriot missing persons in a sensitive, humanitarian and equal manner.

CMP has been carrying out its mandate. It exhumes the remains of Turkish and Greek Cypriot missing persons, 100+ individuals annually on average, and had the most successful year in terms of identifications in 2014.¹

On its part, the Turkish side is committed to support the CMP. Therefore, the Turkish and the Turkish Cypriot authorities continue to make financial contribution to the CMP to ensure its continued effectiveness.

Further to the information already shared about burial places at its possession in 1998, the Turkish side also shares any new information it acquires with the CMP. The Turkish side also accommodates the exhumation requests of the CMP, including in the military areas. All 27 requests for access of the exhumation teams in military areas have been granted for this purpose.

In continuation of the work of the CMP, the Missing Persons Unit (MPU) of the Turkish Cypriot Police conducts criminal investigations under the guidance of the Turkish Republic of Northern Cyprus' Attorney-General's Office. MPU has been working on 434 criminal investigations.

Here we fully understand how difficult it is for the relatives who have lost their loved ones to go through similar processes. Yet, the MPU has a family-centered approach at its heart, and wants to provide a platform for the families, including the members of the "World Federation of Organisations of Missing Persons' Relatives of Cyprus", to raise any questions or concerns that they may have so that the MPU will endeavor to answer them as far as possible. Unfortunately, so far only a few relatives participated in this process.

Clearly, the measures taken regarding the missing persons cluster in the "Cyprus v. Turkey" case are being implemented in an effective manner. They are delivering concrete results.

It should be added that the concerns raised by the Federation can only be fully remedied with the cooperation of all concerned. In this respect, the Greek Cypriot side also has responsibilities with respect to Greek Cypriot missing persons, as confirmed by the UN Human Rights Committee. The Committee has recently called upon the Greek Cypriot side to support the CMP, and to take immediate steps to investigate all outstanding cases of Turkish Cypriot and Greek Cypriot missing persons in an effective, transparent, independent and impartial manner.²

Nevertheless, a recent judgment delivered by the Greek Cypriot Supreme Court in the *Pashia* case³ on 26 May 2015 raised concerns about the standard the Greek Cypriot side is to apply for the

¹ Please refer to the CMP's website www.cmp-cyprus.org/tr for the most recent figures and statistics.

² Concluding observations on the fourth periodic report of "Cyprus" of the UN Human Rights Committee, adopted on 31 March 2015, on the implementation of the Covenant on Civil and Political Rights.

³ Case No. 381/2010.

fulfillment of its obligations arising from the procedural aspects of Articles 2 and 3 of the European Convention on Human Rights with respect to Greek Cypriots listed as missing persons.

At the outset, in *Pashia*, the Greek Cypriot Supreme Court acknowledged that the Greek Cypriot side also has obligations arising from Articles 2 and 3 of the European Convention on Human Rights to determine the fate of Hristofi Vasiliu Pashia. Mr Pashia was a Greek Cypriot soldier who died in action but he was listed as a missing person, and his relatives were informed that he was missing when in fact the Greek Cypriot authorities buried him back in 1974. The Greek Cypriot side did not inform the relatives about his fate until 1999 when his remains had been exhumed in an area under the control of the Greek Cypriot side.

Although the lower court held that the Greek Cypriot authorities had been negligent for failing to properly inform the family of Mr Pashia about his fate and awarded the family compensation, the Greek Cypriot Supreme Court reversed this judgment holding that the Greek Cypriot side fulfilled its obligations merely on the basis of "the prevailing facts" at the time of burial. As for the period that lapsed between the burial and subsequent identification, the Greek Cypriot Supreme Court added that the Greek Cypriot side has no positive obligation to ensure excavation, exhumation, identification or burial of remains. The lower court's decision on compensation, including non-pecuniary losses, was also reversed by the Supreme Court that cited established case-law to the effect that it is exceptional for a claimant to receive damages for non-pecuniary losses for distress, humiliation etc. which requires meeting a very high threshold. The Greek Cypriot Supreme Court decided that it was not appropriate to award any damages to the relatives of Mr Pashia, and instead, told the relatives to let him rest in peace.

It is important that the Greek Cypriot side does not hide behind this judgment and remain inactive when there is information at its exclusive possession about the fate and places of burial regarding those who are listed as missing persons that can be acquired with the necessary effort. They should also be proactive in supporting the CMP and taking immediate steps to investigate all outstanding cases of missing persons.

This effort should also be exerted for Turkish Cypriot missing persons as the relatives of Turkish Cypriot missing persons have also been expressing their concern about the lack of acknowledgment regarding their missing relatives. The relatives of Turkish Cypriot missing persons applied to the Greek Cypriot courts but the courts relied on "act of state" to conclude that the courts have no jurisdiction to review the acts of the Greek Cypriot authorities regarding Turkish Cypriot missing persons, and their applications to the European Court of Human Rights were rejected as the Court said they were lodged too late. As a result, CM-DH has also been hearing about Greek Cypriot missing persons only.

The lack of acknowledgement regarding Turkish Cypriot missing persons has led to a prioritization of the investigations of Greek Cypriot missing persons over those relating to Turkish Cypriot missing persons, as found by the UN Human Rights Committee.

However, it is important that the work in the CM-DH does not reinforce this prioritization that will have further negative implications for the fulfillment of the obligations of the Greek Cypriot side both at the level of investigating outstanding cases of missing persons, and after the missing persons have been found by the CMP.