



KUZEY KIBRIS TÜRK CUMHURİYETİ
ŞEHİT AİLELERİ VE MALÜL GAZİLER DERNEĞİ
THE TURKISH REPUBLIC OF NORTHERN CYPRUS
ASSOCIATION OF MARTYR'S FAMILIES AND WAR VETERANS
www.kkctc-sehitaileleri.org - info@kkctc-sehitaileleri.org
13 Kızılay Sokak, Yenişehir Lefkoşa, Mersin 10 - Turkey
Tel: 90 (392) 227 1546 / 227 5106 - Fax: 90 (392) 227 1071

11 October 2019

Dear Sir(s)/Madam(s),

Written information for the examination of the fifth periodic Report for Cyprus by the Committee against Torture of the OHCHR under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

We are hereby submitting written information with regard to report submitted by Cyprus.

I. Missing Persons

Background information

The disappearance of 502 Turkish Cypriots in 1963-64 and in 1974 left behind as many families who remained in the state of uncertainty of not knowing what happened to their loved ones.

320 innocent Turkish Cypriot civilians disappeared during the period of 1963-64, upon being forcibly taken from their homes, hospitals and businesses by the Greek Cypriot police. The Greek Cypriot authorities even denied the fact that any disappearance actually took place between 1963-64 even though the perpetrators were officials under their direct responsibility and control. The increasing violence which caused displacement and the loss of the main breadwinners of their families in most cases resulted in the families of victims to endure living under inhumane conditions, without any kind of means or support.

The number of missing Turkish Cypriots increased to 502 with the events of 1974. This meant more families were to experience the suffering caused by uncertainty of not knowing what happened to their loved ones, not knowing the whereabouts and fate of their mothers, fathers, sisters, brothers and even children.

For many years, despite the serious nature of the human violations due to the acts and omissions of the Greek Cypriot authorities, the relatives of Turkish Cypriot missing persons did not have an appropriate platform to turn to, either domestically¹ or internationally,² in order to ensure that the Greek Cypriot authorities fulfilled their responsibilities, that is to conduct effective investigations into the whereabouts and fate of Turkish Cypriot missing persons who disappeared under life-threatening circumstances in 1963/64 and in 1974, to inform the relatives accordingly, and to set up an effective redress or reparation procedure for the families of the victims.

Committee's involvement concerning our cause

Your Committee's response to our request, however, provided us with a glimpse of hope. In the concluding observations of your Committee's fourth concluding observations (para. 21), as well as those of the Human Rights Committee (para. 10), we were finally relieved to see that our calls were heard. The acknowledgement of the problem concerning those Turkish Cypriots who are still missing as well as those who have been identified by the Committee on Missing Persons in Cyprus are welcome by the relatives of Turkish Cypriot missing persons.

Unfortunately, we regret to report that there has not been a positive change in the actions/omissions of the Greek Cypriot authorities on the ground. The dismissive and ignorant attitude towards Turkish Cypriot missing persons and us, the relatives, are also clear in the

¹ On the domestic level, the Greek Cypriot courts rejected to look into the substance of the claims of Turkish Cypriot relatives of missing persons that the Greek Cypriot authorities failed to ascertain the fate of those who disappeared, did not conduct effective investigation to that end, and failed to return the remains of the disappeared nor to identify or prosecute the perpetrators, and denied jurisdiction. By deciding that the case was within the sphere of "act of government", the Greek Cypriot courts gave immunity to its officials.

² The European Court of Human Rights found the applications by the relatives of Turkish Cypriot missing persons inadmissible on the ground that 2001 was too late to lodge their applications (Please see, for example, *Karabardak v. Cyprus* (76575/01) and *Baybora v. Cyprus* (77116/01) cases). The Court then clarified in the *Varnava and others v. Turkey* judgment that applications concerning missing persons should have been lodged by the end of 1990 at the latest. Thus, the European Court of Human Rights did not ever consider whether the Greek Cypriot side met its responsibility arising from Articles 2,3 and 5 of the European Convention with respect to Turkish Cypriot missing persons.

At the same time, the applications of relatives of Turkish Cypriot missing persons lodged after the Committee of Missing Persons found the remains of their relatives have also been rejected by the European Court of Human Rights on the ground that there were ongoing criminal investigations. (Please see, for example, *Emin and others v. Cyprus* (application no. 59623/08) and six other applications, dated 3 April 2012).

“response”³ provided to the comprehensive list of issues your Committee submitted to them prior to the submission of the fifth periodic report of Cyprus.⁴

Committee on Missing Persons

Concerning the call of the Human Rights Committee to the Greek Cypriot authorities to take immediate steps to investigate all outstanding cases of missing persons in an effective, transparent, independent and impartial manner, the Greek Cypriot authorities merely refer to the statistics of the CMP which suggests that there is no other body that is working on this humanitarian issue concerning Turkish Cypriot missing persons. By way of contrast, Greek Cypriot authorities have unilateral exhumations programme they conduct in parallel to the work of the CMP for Greek/Greek Cypriot missing persons concerned.

Regarding the CMP, we are concerned with the pace with which CMP is operating. Since 13 years into the launching of its project on the Exhumation, Identification and Return of Remains of Missing Persons in Cyprus, 227 Turkish Cypriots continue to be missing as of 30 September 2019.

The statistics of the CMP show a dramatic decrease in the number of individuals exhumed, decrease in the number of missing persons identified and decrease in the percentage of excavation sites with remains found.⁵

While the Greek Cypriot authorities merely make reference to the statistics of CMP in the report they submitted, they fail to explain whether they proactively assist the CMP so that it may effectively carry out its mandate in determining the fate of missing persons. A proactive approach entails providing the CMP with any information from the relevant archives, including police and military archives, which are in the possession of the Greek Cypriot authorities on burial sites and other places where the remains have been relocated.

As the relatives, we are of the view that CMP would have been delivering better results concerning locating Turkish Cypriot missing persons but for the withdrawing of information from the relevant archives by the Greek Cypriot authorities, especially police archives for the

³ CAT/C/CYP/5, dated 30 January 2019, response to paragraph 28(a) and (b).

⁴ CAT/C/CYP/QPR/5, para. 28.

⁵ www.cmp-cyprus.org/content/facts-and-figures (up to 30 September 2019).

1963-64 period as Turkish Cypriot missing persons were taken by the Greek Cypriot police. These archives which were and continue to be held in the custody of the Greek Cypriot authorities were kept by them at the time of these disappearances.

Equally, CMP should have unhindered access to all civilian and military zones located in South Cyprus without any delay in case there is information on possible burial sites in such areas.

The protection/safeguarding of burial sites is another problem concerning Turkish Cypriot missing persons where the CMP has found that remains are being transferred to unknown locations. This means that some Turkish Cypriot families received only residual human remains, or none at all, as this was the case in Taşkent (Tochni) village. As the relatives, we cannot express the considerable pain burying few remains adds to our ordeal.

During this year, the Greek Cypriot side dismissed the Greek Cypriot Member of the CMP and almost six months elapsed before the CMP could become operation with a permanent Greek Cypriot Member again.

Rather than providing information on these crucial areas, the “response” of the Greek Cypriot side merely tries to shift responsibility on this front onto Turkey (which is fulfilling its own obligations under the European Convention of Human Rights, under the supervision of the Committee of Ministers as part of its responsibility to supervise the execution of the relevant judgments concerning Greek Cypriot missing persons). While commending the work of the CMP, in July 2019, the UN Security Council called upon “...***all parties expeditiously to enhance their cooperation with the Committee ’s work, in particular through providing full access to all areas and responding in a timely manner to requests for archival information on possible burial sites***”.⁶ In the South of the island, both Greece and the Greek Cypriot side have military camps and military areas under their control.

Thus, the call of the UN Security Council is on all parties to give the CMP full access to all areas as well as to respond to the requests of CMP for archival information on possible burial sites applies equally to the Greek and Greek Cypriot authorities.

⁶ S/RES/2483 (2019), dated 25 July 2019, operative para. 7.

The only information Greek Cypriot authorities give in response to the calls of the two UN Committees to provide support to the CMP is their financial contribution, though also adding those contributions of the EU, which are actually from the funds earmarked for the economic development of Turkish Cypriots.

The evolving case-law of the Greek Cypriot Supreme Court is also alarming for us as the relatives of Turkish Cypriot missing persons. In the case of *Pashias v AGR*, dated 26 May 2015, the Greek Cypriot highest court found that the responsibility of Greek Cypriot authorities under Article 2 of the European Convention on Human Rights, found to be directly applicable in *Yiallourou v Nicolaou*, start only after locating the place of burial, excavation, exhumation and following the identification of missing persons. For Turkish Cypriot missing persons this means that the Greek Cypriot authorities will deny having any obligations under domestic law until CMP finds the remains and identifies the Turkish Cypriot missing persons. This development carves out a bigger judicial immunity for the omissions of Greek Cypriot authorities than the previous finding of the Greek Cypriot administrative courts that such acts/omissions are within the sphere of “act of government”.⁷ Thus, this most recent judgment delivered by the highest court, which was surprisingly referred by the Greek Cypriot authorities as a remedy on the issue of adequate compensation, not only fails to provide any relief, but further closes the door for any possibility of redress, including support or compensation, to the families of the victims.

Investigations after the work of the Committee on Missing Persons

The Committee’s question about the measures to be taken by the Greek Cypriot authorities, if any, to ensure the relatives of those missing persons who had been identified by the CMP receive appropriate redress also remains unaddressed. The Greek Cypriot authorities did not provide any information, statistical or otherwise, concerning the measures taken, the means for psychological rehabilitation, compensation and satisfaction or on the means to ensure our right to know the truth on the circumstances of disappearance, on the progress and results of the investigations and the measures taken to ensure our rights to participate in the proceedings, including by challenging the acts or omissions of the investigating authorities in the court.

⁷ In a decision dated 16 October 2003, the Supreme Court in its appellate jurisdiction rejected the case on the basis that the case did not concern an administrative decision but was an act of government outside the court’s jurisdiction. Matters relating to missing persons were part of the Cyprus problem and fell within the power of the political authority (Please see, *Özalp Behiç, Ece Behiç and Suzan Behiç and others v. Republic of Cyprus Attorney-General, Council of Ministers, Ministry of Foreign Affairs, Ministry of Interior* (case nos. 589/06, 590/06, 591/06, 592/06, 593/06).

The authorities limited their contribution to an explanation of one judgment of the European Court of Human Rights where the Court found three criminal investigations and their conclusions to be Convention-compliant in those specific cases.

Nevertheless, the truth of the matter is that there is no development concerning these investigations. The relatives of Turkish Cypriot missing persons, at the expense of reviving their never-ending distress, continued to cooperate with the Greek Cypriot investigative authorities so as to ensure that these investigations actually lead to prosecution of the perpetrators of heinous crimes committed against our loved ones. They have attended the police headquarters in the South and provided written statements enabling the Greek Cypriot police to carry out their criminal investigations. In some cases, they have even given names of places where the deceased was last seen and the names of perpetrators they have obtained from other witnesses.

However, even with this assistance it has taken the Police and the Office of the Attorney-General on average 6-7 years to complete an investigation and none of the investigations have resulted in the prosecution of any perpetrator. The table attached (Table 1) which shows the handing of a few of such investigations, provides a clearer picture.

Another 32 missing persons were found by the CMP in more recent times and delivered to their families. Accordingly, the Greek Cypriot police commenced criminal investigations to determine the circumstances of death and to identify and prosecute any perpetrators. Approximately 20 families have attended the Police Headquarters with private lawyers and have given written statements between January and July 2019. However, the families faced some difficulties whilst giving written statements at the Police Headquarters. Some families have complained of the fact that at the entrance to the Police Headquarters many families were made to wait for hours for the mere fact that they did not have identity cards of the “Republic of Cyprus”, even though they had presented their identity cards of the TRNC. Also, the families complained that they were kept at the premises for a long periods whilst giving their statements. Furthermore, the Interpreter at the Police Headquarters who was intended to help the families was not qualified enough to translate between the Turkish and Greek languages sufficiently and immediately prolonging the process.

To this day, the only response the relatives received from the Greek Cypriot Attorney-General with almost similar reports was that all the investigations some with identified perpetrators came to an end without any prosecution. In all cases, the Attorney-General decided to close the files not identifying a single perpetrator nor prosecuting anyone. The decision of the Attorney-General is also immune from judicial review, as it is also admitted by the Greek Cypriot authorities in their “response”.

Request

We, as the relatives of the Turkish Cypriot missing persons turn to your Committee, to follow-up on your calls on the Greek Cypriot authorities to redouble efforts so as to ensure that the investigations into Turkish Cypriot missing persons are as effective, transparent, independent and impartial as those into Greek Cypriots (to prevent further prioritization of Greek Cypriot missing persons).

We thus request the Committee to bring up the issue of Turkish Cypriot missing persons with the Greek Cypriot authorities again and, in addition to the questions the Committee posed and the authorities failed to answer, also ask the following questions:

Questions and remarks for the examination of the Report of Cyprus:

*What measures have been taken by the Greek Cypriot authorities into cases of disappearances from 1963/64 and 1974 to ensure conducting effective, independent and transparent investigations into cases of Turkish Cypriot missing persons? In particular, please provide (a) information on the proactive approach to providing the Committee on Missing Persons in Cyprus with all the necessary assistance, particularly by means of (i) providing the CMP with any information from the relevant archives, including civilian and military archives, in their possession on burial sites and any other places where relocated remains might be found, (ii) measures/safeguards taken to prevent relocations, and (iii) ensuring that the CMP has unhindered access to all possible civilian and military zones, and (b) notifying about the process and the results of such investigations to family members of Turkish Cypriot missing persons and the measures taken to ensure participation in the proceedings, including by challenging the acts or omission of the authorities.

*What measures have been taken by the Greek Cypriot authorities into cases of Turkish Cypriot missing persons subsequent to their location, exhumation and identification? In particular,

please provide information on (a) the investigations undertaken, measures taken to ensure the effectiveness, independence and transparency of such investigations, and their outcomes, including prosecutions and convictions of perpetrators, (b) due notification of the process and the results of such investigations and prosecutions to family members of Turkish Cypriot missing persons who have been identified, and the measures taken to ensure participation in the proceedings, including by challenging the acts or omission of the investigative authorities.

*What kind of redress and reparation for the relatives of the Turkish Cypriot missing persons have been set up by the Greek Cypriot authorities?


II. Access to the cemeteries of the Turkish Cypriot Martyrs in the Southern Cyprus

We also would like to draw your attention to another issue which is very sensitive for the families of the Turkish Cypriot Martyrs, who were killed by the Greek Cypriots between 1963-74 and buried in the Turkish Cypriot Martyrs cemeteries in the Greek Cypriot Administration of Southern Cyprus. These families do not have access to the graveyards of their loved ones, since most of these cemeteries are either destroyed or kept locked.

Among 17 cemeteries in Southern Cyprus, 16 are totally destroyed. The only cemetery which qualifies the necessary physical conditions suitable for visits is the Turkish Cypriot Martyrs Cemetery in Baf (Paphos). However, it is kept locked despite all our pending requests.

This situation constitutes a blatant violation of religious freedom, as well as disrespect towards Martyrs, and is particularly upsetting for the Martyr's families who are denied access to the graveyards of their loved ones, and thus deprived of a basic right of visiting and praying for their losses in accordance with the Islamic requisition.

It is our Association's expectation from the Committee against Torture of the OHCHR to take up this issue during the examination of the Report for Cyprus.


Gürsel BENAN
President
Association of Martyr's
Families and War Veterans
