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EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER JUDGMENT¹

VARNAVA AND OTHERS v. TURKEY

(application nos.16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90)

Disappearances During the 1974 Conflict in Northern Cyprus

Continuing violation of Article 2 (right to life)

Continuing violation of Article 3 (prohibition of inhuman or degrading treatment)

Continuing violation of Article 5 (right to liberty and security) in respect of Eleftherios Thoma and Savvas Hadjipanteli

No violation of Article 5 in respect of the other seven missing men

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 12,000 euros (EUR) per application in respect of non-pecuniary damage and EUR 8,000 for costs and expenses. (The judgment is available in English and French.)

PRINCIPAL FACTS

The applications were introduced before the Court in the name and on behalf of 18 Cypriot nationals, nine of whom had disappeared during military operations carried out by the Turkish Army in northern Cyprus in July and August 1974. The nine other applicants are or were relatives of the men who disappeared.

Among the nine people who disappeared, eight were members of the Greek-Cypriot forces that had attempted to oppose the advance of the Turkish army. According to a number of witness statements, they had been among prisoners of war captured by the Turkish military. The ninth person, Mr Hadjipanteli, a bank employee, was taken for questioning by Turkish soldiers on 18 August 1974. His body, which bore several bullet marks, was found in 2007 in the course of a mission carried out by the United Nations Committee of Missing Persons (CMP).

¹ Grand Chamber judgments are final (Article 44 of the Convention)

The Turkish Government disputed that these men had been taken into captivity by the Turkish Army. They submitted that the first eight were military personnel who had died in action and that the name of the ninth one did not appear on the list of Greek-Cypriot prisoners held at the stated place of detention, inspected by the International Red Cross. The Cypriot Government stated, however, that the nine men had gone missing in areas under the control of the Turkish forces.

COMPLAINTS, PROCEDURE AND COMPOSITION OF THE COURT

The applicants alleged that their relatives had disappeared after being detained by Turkish military forces in 1974 and that the Turkish authorities had not accounted for them since. They relied on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 4 (prohibition of forced labour), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private and family life), 10 (freedom of expression), 12 (right to marry), 13 (right to an effective remedy) and 14 (prohibition of discrimination).

The applications were lodged with the European Commission of Human Rights on 25 January 1990. They were joined by the Commission on 2 July 1991, and declared admissible on 14 April 1998. They were transmitted to the Court on 1 November 1998.

In its judgment of 10 January 2008 (“the Chamber judgment”), the Chamber held unanimously that there had been violations of Articles 2, 3 and 5 of the Convention and that no separate issues arose under Articles 4, 6, 8, 10, 12, 13 and 14 of the Convention. It also held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants.

On 7 July 2008, under Article 43² of the Convention the case was referred to the Grand Chamber at the Turkish Government's request. The Cypriot Government submitted written observations and so did the organisation REDRESS which, in September 2008, was granted leave to intervene in the written procedure. A public hearing took place at the European Court of Human Rights in Strasbourg, on 19 November 2008.

The Government challenged the Court's jurisdiction to examine the case on several counts. First, they submitted, among other things, that there was no legal interest in determining these applications given that the Court had already decided on the question of the disappearances of all missing Greek Cypriots in the fourth inter-State case. Secondly, the applications fell outside of the Court's temporal jurisdiction given that they all related to facts which had occurred before Turkey's acceptance of the right of individual petition on 28 January 1987. Lastly, too much time had lapsed between the facts and the introduction of the applications which had to be declared inadmissible for not being taken before the Court within six months after Turkey's acceptance of the right to individual petition.

Judgment was given by a Grand Chamber of seventeen judges composed as follows:

Jean-Paul **Costa** (France), *President*,
 Françoise **Tulkens** (Belgium),
 Josep **Casadevall** (Andorra),
 Anatoly **Kovler** (Russia),
 Vladimiro **Zagrebelky** (Italy),
 Lech **Garlicki** (Poland),
 Dean **Spielmann** (Luxembourg),
 Sverre Erik **Jebens** (Norway),
 Ineta **Ziemele** (Latvia),
 Mark **Villiger** (Liechtenstein),
 Päivi **Hirvelä** (Finland),
 Luis **López Guerra** (Spain),
 Mirjana Lazarova **Trajkovska** ("the former Yugoslav
 Republic of Macedonia"),
 Nona **Tsotsoria** (Georgia),
 Ann **Power** (Ireland),

² Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Zdravka **Kalaydjieva** (Bulgaria), *judges*,
 Gönül **Erönen** (Turkey), *ad hoc judge*,
 and Erik **Fribergh**, *Registrar*.

DECISION OF THE COURT

Preliminary objections by the Government

Legal interest

The Court first noted that for an application to be substantially the same as another which it had already examined it had to concern substantially not only the same facts and complaints but be introduced by the same persons. While the fourth inter-State case had indeed found a violation in respect of all missing persons, the individual applications allowed the Court to grant just satisfaction awards for pecuniary and non-pecuniary damage suffered by individual applicants, and to indicate any general or individual measures that might be taken. Satisfied that a legal interest remained in pursuing the examination of these applications, the Court rejected the Government's objection.

Temporal jurisdiction

The Court noted that the applicants had specified that their claims related only to the situation pertaining after 28 January 1987 (namely the date of Turkey's acceptance of the right of individual petition). The Court held that obligation to account for the fate of the missing men by conducting an effective investigation was of a continuing nature and even though the men had been missing for over 34 years without any news, this obligation could persist for as long as the fate of the missing persons was unaccounted for. Accordingly, the Court dismissed the Government's objection on this count.

Late submission to the Court

The Court noted that the applicants had introduced their applications some 15 years after their relatives went missing in 1974 and that it had not been possible for them to do so before 1987. Having regard to the exceptional situation brought about by the international conflict, the Court was satisfied that the applicants had acted with reasonable expedition, even though they had brought their complaints about three years after Turkey had accepted the right to individual petition. The Court therefore rejected this objection too.

Article 2

The Court noted that the Turkish Government had not put forward any concrete information to show that any of the missing men had been found dead or had been killed in the conflict zone under their control. Nor had there been any other convincing explanation as to what might have happened to them that could counter the applicants' claims that the men had disappeared in areas under the Turkish Government's exclusive control. In light of the findings in the fourth inter-State case, which had not been refuted, these disappearances had occurred in life-threatening circumstances where the conduct of military operations had been accompanied by widespread arrests and killings.

The Court fully acknowledged the importance of the CMP's ongoing exhumations and identifications of remains and gave full credit to the work being done in providing information and returning remains to relatives. It noted, however, that while its work was an important first step in the investigative process, it was not sufficient to meet the Government's obligation under Article 2 to carry out effective investigations. In particular, the CMP was not determining the facts surrounding the deaths of the missing persons who had been identified, nor was it collecting or assessing evidence with a view to holding any perpetrators of unlawful violence to account in a criminal prosecution. No other body or authority had taken on that role either. The Court did not doubt that many years after the events there would be considerable difficulty in assembling eye-witness evidence or in identifying and mounting a case against any alleged perpetrators. However, recalling its established case-law on the clear obligation of States to investigate effectively, the Court found that the Turkish Government had to make the necessary efforts in that direction. The Court concluded therefore that there had been a continuing violation of Article 2 on account of Turkey's failure to effectively investigate the fate of the nine men who disappeared in 1974.

Article 3

The Court recalled its finding in the fourth inter-State case that in the context of the disappearances in 1974, where the military operation had resulted in considerable loss of life and large-scale detentions, the relatives of the missing men had suffered the agony of not knowing whether their family members had been killed or taken into detention. Furthermore, due to the continuing division of Cyprus, the relatives had

been faced with very serious obstacles in their search for information. The Turkish authorities' silence in the face of those real concerns could only be categorised as inhuman treatment.

The Court found no reason to differ from the above finding. The length of time over which the ordeal of the relatives had been dragged out and the attitude of official indifference in the face of their acute anxiety to know the fate of their close family members had resulted in a breach of Article 3 in respect of the applicants.

Article 5

The Court found that there was an arguable case that two of the missing men, Eleftherios Thoma and Savvas Hadjipanteli, both of whom had been included on ICRC lists as detainees, had been seen last in circumstances falling within the control of the Turkish or Turkish Cypriot forces. However, the Turkish authorities had not acknowledged their detention, nor had they provided any documentary evidence giving official trace of their movements. While there had been no evidence that any of the missing persons had been in detention in the period under the Court's consideration, the Turkish Government had to show that they had carried out an effective investigation into the arguable claim that the two missing men had been taken into custody and not seen subsequently. The Court's findings above in relation to Article 2 left no doubt that the authorities had also failed to conduct the necessary investigation in that regard. There had therefore been a continuing violation of Article 5 in respect of Eleftherios Thoma and Savvas Hadjipanteli.

Given that there had been no sufficient evidence showing that the other seven men had been last seen under Turkish control, there had been no violation of Article 5 in respect of them.

Other Articles

Having had regard to the facts of the case, the submissions of the parties and its findings under Articles 2, 3 and 5 of the Convention, the Court concluded that it had examined the main legal questions raised in the present application and that it was not necessary to give a separate ruling on the applicants' remaining complaints.

Judges Kalaydjieva, Power, Spielmann, Villiger and Ziemele expressed concurring opinions, and Judge Erönen expressed a dissenting opinion. All opinions are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.