Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Declassified*
AS/Jur (2023) 06
26 January 2023
ajdoc06 2023

Committee on Legal Affairs and Human Rights

The Implementation of judgments of the European Court of Human Rights – 11th report

Information note in preparation of a hearing in relation to Türkiye

Rapporteur: Mr Constantinos EFSTATHIOU, Cyprus, Socialists, Democrats and Greens Group

1. Introduction

1. According to the Annual Report 2021 on the Execution of Judgments, Türkiye has the second largest number of cases pending execution (510 cases) of Council of Europe member States, with the largest number of leading cases (139 cases) and the second largest number of repetitive cases (371 cases).[1] Türkiye was also 1st in relation to numbers of cases closed during 2021 (222 cases of which 203 were repetitive cases). For 2022, the case numbers look to be similar with 471 cases pending execution (126 leading cases and 345 repetitive cases) but only 107 cases were closed during 2022 (of which 81 were repetitive cases).

2. It is important to note that the number of Turkish pending cases has drastically diminished in recent years, in particular as concerns repetitive cases (for example where individual measures have been addressed or became impossible to perform due to the application of the statute of limitations in Turkish law). However, the number of leading cases (which indicate systemic issues) remain high, and Turkey has a large number of leading cases that have been pending for over 5 years (78). Leading cases often require significant general measures in order to resolve them, such as legislative change or improvements to the independence of the judiciary and the functioning of the rule of law.

3. There has been recent progress on cases concerning property rights, and medical negligence. However, political will is required to make the changes needed to address cases relating to the freedom of expression, freedom of association and right to liberty (Articles 5, 10 and 11 ECHR). Key groups of cases relate to freedom of expression; the independence of the judiciary and the functioning of the justice system; freedom of thought, conscience and religion; freedom of assembly; and the consequences of the 1974 Turkish military intervention in northern Cyprus.

4. The *Kavala, Demirtaş* and *Yüksekdağ Şenoğlu* cases are of particular interest given the Committee's focus for this Report on Article 18 cases relating to human rights violations for politically motivated reasons. Reforms to the composition of the Council of Judges and Prosecutors, in line with the Venice Commission Opinion, would be key to ensuring the independence of the judiciary. The continued failure to comply with the Article 46(1) and 46(4) judgments of the ECtHR in the case of *Kavala* is of particular concern for respect of the Council of Europe's human rights system and the rule of law as a whole.

5. The *Bati* Group of cases, relating to the ineffectiveness of investigations into torture or ill-treatment by members of security forces could be of special interest to the Committee given its ongoing work on the report

* Document declassified by the Committee on 25 January 2023.
[1] Annual Report 2021.

on torture. The *Cyprus v Turkey* case is also of particular interest given the Committee's focus for the present report on inter-State cases.

2. Potential areas of inquiry

- What progress has been made in implementing ECtHR judgments?
- What barriers exist to timely and effective implementation of ECtHR judgments?
- What are the domestic systems for coordinating the implementation of ECtHR judgments? How are those systems working and could they be improved?
- What systems of accountability exist to ensure the involvement of civil society and accountability to Parliament for the implementation of ECtHR judgments? How are those systems working and could they be improved?
- In its 2022 Article 46(4) *Kavala* judgment, the ECtHR found that Türkiye continued to fail to comply with the final judgment of the ECtHR in the 2019 case of *Kavala*, in breach of its obligations under the Convention. This is due to Kavala's continued detention (and indeed conviction) based on facts that the ECtHR assessed did not warrant reasonable suspicion, let alone conviction. The continued failure to comply with this judgment raises significant concerns for the respect for the human rights and the rule of law within the Convention system. What can parliamentarians and other actors do to help compliance with this judgment and to resolve this situation?
- What challenges exist and what progress is being made in addressing the inter-State case Cyprus v. Türkiye and what lessons might we learn from this experience for addressing other inter-State cases?

3. Specific cases

3.1. Article 46(4) and failure to comply with a final judgment of the ECtHR – Arbitrary detention – violation of rights with the ulterior purpose of silencing the applicant and dissuading other human rights defenders – Kavala

6. Mr Kavala, a human right defender in Turkey, has been involved in setting up numerous non-governmental organisations and civil-society movements which are active in the areas of human rights, culture, social studies, historical reconciliation and environmental protection. Mr Kavala was arrested on 18 October 2017 and placed in pre-trial detention, accused of attempting to overthrow the government within the context of the Gezi Park events of 2013 (Article 312 of the Turkish Criminal Code (TCC)) and to overthrow the constitutional order within the context of the attempted coup in July 2016 (Article 309 TCC). He has been deprived of his liberty since then.

7. In the 2019 Kavala judgment,[2] the Court concluded that there had been a violation of Articles 5 and Article 18 taken together with Article 5, with regard to the suspicions raised against Mr Kavala in October 2017 concerning the Gezi Park events and the attempted coup of 15 July 2016, and his subsequent pre-trial detention. The Court found that this arrest and pre-trial detention took place in the absence of evidence to support a reasonable suspicion he had committed an offence and also that they pursued the ulterior purpose of silencing him and dissuading other human rights defenders (violation of Article 18 taken in conjunction with Article 5). The Court indicated that any continuation of the applicant's pre-trial detention would entail a prolongation of the violation of Article 5 and of Article 18 in conjunction with Article 5, as well as a breach of Türkiye's obligations to abide by the Court's judgments in accordance with Article 46(1) of the Convention. It therefore held that the government should secure his immediate release.

8. However, the applicant was not released, and the Committee of Ministers thus referred the matter to the Court. In the ensuing 2022 *Kavala* (Article 46 § 4) judgment, issued on 11 July 2022, the Grand Chamber found that Türkiye had failed to fulfil its obligation to comply with final judgments of the ECtHR under Article 46 § 1. It noted that failure to implement a final, binding judicial decision would be likely to lead to situations incompatible with the principle of the rule of law. The Court considered that the measures indicated by Türkiye did not permit it to conclude that the State Party had acted in "good faith", in a manner compatible with the "conclusions and spirit" of the *Kavala* judgment, or in a way that would make practical and effective the protection of the Convention rights which the Court found to have been violated in that judgment. The Court held that it followed that its finding in the first *Kavala* judgment of a violation of Article 5 § 1, read separately and in conjunction with Article 18, "vitiated any action resulting from the charges relating to the Gezi Park events and the attempted coup".

9. On 25 April 2022, the Assize Court convicted the applicant and sentenced him to aggravated life imprisonment for attempting to overthrow the government by force (Article 312 of the TCC). On 28 December

[2] *Kavala v Türkiye* – see here for status of implementation.

2022 the Istanbul Regional Appeal Court rejected the applicant's appeal against conviction and sentence. Given the ECtHR's findings that there was insufficient evidence for any *reasonable suspicion* that Mr Kavala had committed these crimes, it is difficult to understand how the Turkish Courts have concluded that there was sufficient evidence for *conviction*. An appeal to the Court of Cassation is likely. On 9 June 2022, the applicant additionally lodged an application with the Constitutional Court complaining about the unlawfulness of his continued detention. These proceedings are pending.

10. The Turkish authorities have sought to dispute the clear findings of the ECtHR rather than seeking to comply with Türkiye's obligations under Article 46(1) ECHR to eliminate all the negative consequences of the criminal charges brought against Mr Kavala, which raises concerns for credibility of the Convention system as a whole.

11. On 11 July 2022, the former Chair of the Committee of Ministers, the President of the Parliamentary Assembly, and the Secretary General made a joint statement, urging Türkiye, as a Party to the Convention, to take all necessary steps to implement the judgment. In November 2022, the Committee of Ministers appointed a Liaison Group of Ambassadors to assist the Chair in engaging with the Turkish authorities regarding the implementation of the judgment in the *Kavala* case (CM/Del/Dec(2022)1446/H46-1). The Committee of Ministers continue to examine the Kavala case at its weekly meetings. The last decisions were adopted in December 2022. On 10 October 2022, the Parliamentary Assembly of the Council of Europe's (PACE) Committee on the Honouring of Obligations and Commitments by member States authorised two co-rapporteurs to carry out a fact-finding visit to Türkiye and took note of their intention to request a meeting with Mr Osman Kavala, as a follow up to Resolution 2459 (2022). That visit took place on 12-13 January 2023.

3.2. Arbitrary detention – politically motivated violation of rights – Selhattin Demirtaş

12. The *Selhattin Demirtaş (No 2)*[3] case concerns the politically motivated arrest and detention of Mr Demirtaş. Selhattin Demirtaş was, between 2007-2018, one of the leaders of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish opposition party, and a member of the Turkish National Assembly. He stood in the 2014 and 2018 presidential elections and received 9.76% and 8.32% of the votes respectively.

13. In October 2014, violent protests took place in 36 provinces in eastern Türkiye ("6-8 October events"), followed by further violence in 2015 in the wake of the breakdown of negotiations aimed at resolving the "Kurdish question". On 20 May 2016, with a view "to address public indignation about statements by certain members of parliament constituting emotional and moral support for terrorism", Article 83 § 2 of the Constitution was amended, lifting inviolability from prosecution for certain members of parliament.

14. Mr Demirtaş was one of 154 parliamentarians (including 55 HDP members) who lost parliamentary inviolability following the constitutional amendment. Mr Demirtaş was arrested on 4 November 2016 and placed in pre-trial detention, charged with offences under various provisions of the Criminal Code, Prevention of Terrorism Act, and Meetings and Demonstrations Act, including membership of an armed organisation (Article 314 of the Criminal Code: "CC") and public incitement to commit an offence (Article 214 CC). At the same time eight other democratically elected HDP Members of Parliament, were also detained, as was the former HDP co-chair Figen Yüksekdağ.

15. Under Article 5 §§ 1 and 3, the Court considered, in respect of the applicant's pre-trial detention between 4 November 2016 and 7 December 2018, that the domestic courts had failed to give specific facts or information that could give rise to a reasonable suspicion that the applicant had committed the offences in question and justify his arrest and pre-trial detention (violations of Article 5 § 1 and 3). It further held that the way in which his parliamentary inviolability was removed and the reasoning of the courts in imposing pre-trial detention on him violated his rights to freedom of expression and to sit as a member of parliament (violations of Article 10 and Article 3 of Protocol No. 1). Finally, taking into account, among other elements, the applicant's return to pre-trial detention on 20 September 2019, the Court found it established that the applicant's detention pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate (violation of Article 18 in conjunction with Article 5).

16. The Court indicated under Article 46 that the nature of the violation under Article 18 left no real choice as to the measures required to remedy it, and that any continuation of the applicant's pre-trial detention on grounds pertaining to the same factual context would entail a prolongation of the violation of his rights as well as a breach of the obligation on the respondent State to abide by the Court's judgment in accordance with Article 46 § 1 of the Convention. It therefore held that Türkiye had to take all necessary measures to secure

[3] *Selhattin Demirtaş v Türkiye* – see here for status of implementation.

the applicant's immediate release. The applicant remains in detention; therefore the ECtHR judgment has not been complied with. The Committee of Ministers has strongly urged the Turkish authorities to assure the applicant's immediate release.

17. Other related cases also concern the lifting of parliamentary inviolability of parliamentarians, including the *Kerestecioğlu and Demir* case (Application No 68136/16); *Encü and others* (Application No 56543/16); and the recent judgment in the case *Yüksekdağ Şenoğlu and Others v Turkey*, (Application No 14332/17) (not yet final), which also concerns violations of Articles 5, 10, Article 3 of Protocol 1 and Article 18, following the detention of twelve parliamentarians.

3.3. Freedom of expression – unjustified prosecution and detention of journalists and others for expressing opinion that did not incite hatred or violence; chilling effect on free speech; blocking access to the internet

18. The *Oner and Turk*[4] group of cases concern unjustified and disproportionate interferences with the freedom of expression on account of criminal proceedings for having expressed opinions that did not incite hatred or violence, and the consequent chilling effect on society as a whole (violations of Article 10). Related to this, the Nedim Şener group[5] focuses on the pre-trial detention of (mainly) journalists on serious charges, such as aiding and abetting a criminal organisation or attempting to overthrow the constitutional order, without relevant and sufficient reasons. Altug Taner Akcam[6] deals with prosecutions for publicly denigrating the Turkish nation. The Artun and Güvener group concerns unjustified interferences with freedom of expression on accont of convictions for insulting public institutions, officials and the President. In Vedat Şorli,[7] the ECtHR ruled that criminal proceedings on charges of insulting the President (of the Turkish Republic) were incompatible with Article 10 of the Convention and recommended that the Turkish Criminal Code be revised. The Işikirik[8] group of cases relates to the unforeseeable conviction and lengthy prison sentence for participation in a funeral and a peaceful demonstration as a result of an extensive interpretation of the term "membership" of an illegal organisation. The Court criticised in particular the wording of the legislation and its extensive interpretation by domestic courts which did not provide sufficient protection against arbitrary interferences by the public authorities and therefore lacked foreseeability and had a chilling effect (violations of Articles 10 and 11).

19. Despite some changes to the Anti-Terrorism Law and the Criminal Code to somewhat narrow the scope of application of these provisions, concerns persist. Structural problems around the application of the criminal law to penalise free speech by politicians and journalists continue and create a climate of self-censorship, with the threat of arrest and criminal prosecution.[9] Further amendments of the Criminal Code are required to clarify that the exercise of the right of freedom of expression does not constitute an offence, as well as practical measures to ensure that freedom of expression is valued in Turkish society and that criminal law is not used as a tool to restrict it.

20. The *Dink*[10] case relates to the safety and protection of journalists. It concerns the violation of the right to freedom of expression on account of the conviction of the journalist and newspaper editor Hrant Dink for denigrating Turkishness under Article 301 of the Criminal Code (violation of Article 10). It further concerns the failure of the Turkish authorities to take steps to prevent Hrant Dink's subsequent murder by members of an ultranationalist group, despite having been reasonably informed of a real and imminent threat to his life (substantive violation of Article 2). In addition, the authorities failed to conduct an effective investigation to identify and punish the officials who had failed to take action to prevent the assassination, including a chief police officer who allegedly revealed his support for the suspects (procedural violation of Article 2).

21. The *Ahmet Yildrim*[11] group of cases concerns a violation of the right to freedom of expression on account of domestic court orders blocking access to Google Sites and YouTube (violation of Article 10). Many of the cases relate to the prohibition on insulting the memory of Atatürk. The Law on regulating Internet publications and combating Internet offences is a factor in these cases given the issues of blocking an entire domain or website, such as Google sites or YouTube, on the basis of the content of a single webpage or content hosted on that site, and the failure of judges to undertake an appropriate balancing exercise when determining the proportionality of orders to block an entire site.

[4] *Öner and Türk v Türkiye* – see here for status of implementation.
[5] *Nedem Şener v Türkiye.*
[6] *Altug Taner Akcam v Türkiye* – see here for status of implementation.
[7] *Vedat Şorli v. Turkey.*
[8] Işikirik v Türkiye – see here for status of implementation.
[9] See for example Rule 9 submissions; the European Parliament's 2021 Report on Turkey; as well as statements in 2020 by the Council of Europe's Commissioner for Human Rights.
[10] *Dink v Türkiye* – see here for status of implementation.
[11] *Ahmet Yildrim v Türkiye* – see here for status of implementation.

3.4. Independence of the judiciary and unlawful pre-trial detention in the absence of reasonable suspicion

22. The *Alparslan Altan*[12] group of cases concerns violations of the right to liberty and security, in the immediate aftermath of the coup attempt on 15 July 2016, due to the unlawful initial pre-trial detention of the applicants – judges at the time of the events – on suspicion of membership of the FETÖ (Gülen) organisation. The Court criticised (1) the national courts' extensive interpretation of the concept of discovery in flagrante delicto, which negated the procedural safeguards set out in the legislation which members of the judiciary are afforded in order to protect them from interference by the executive, and (2) the fact that in each case at the time the initial detention order was made (on 20 July 2016) there was no evidence to show reasonable suspicion of commission of the offence (violations of Article 5 § 1).

3.5. Freedom of assembly and association – interferences with peaceful demonstrations; chilling effect on peaceful assembly

23. The *Oya Ataman*[13] group of cases concerns violations of the right to freedom of peaceful assembly, including the prosecution of participants and/or the use of excessive force to disperse peaceful demonstrations. The Court has noted the high number of similar applications and the chilling effect on the right to peaceful assembly of persistently using excessive force, including potentially lethal tear gas canisters, to disperse peaceful demonstrations.

3.6. Functioning of Justice – Enforcement of judicial decisions relating to risks to public health and the environment; procedures for dismissal of public sector workers; procedures for judicial moves

24. The *Piskin*[14] case relates to dismissal of a public sector worker from employment and concerns a violation of the right to a fair trial on account of the failure of the national courts to conduct an in-depth, thorough examination of the applicant's arguments and to give reasons for dismissal of the applicant's challenges (Article 6 § 1). The case further concerns a violation of the right to respect for private life on account of the lack of specification by the employer of the nature of the applicant's activities used as evidence of his links with an illegal structure and a lack of any actual charges explicitly put forward during the domestic proceedings (Article 8).

25. The *Bilgen*[15] case concerns a violation of the right to a fair trial in civil matters due to the lack of access to a court, resulting in a judge's inability to have recourse to judicial review of an allegedly unjustified non-consensual transfer decision to a lower ranking judicial district (Article 6 §1). Concerning the compatibility of the complete absence of a judicial review of a judge's non-voluntary transfer with the rule of law and Article 6 §1 of the Convention, the Court stressed the growing importance of the separation of powers and of the necessity of safeguarding the independence of the judiciary.

26. The *Genç and Demirgan*[16] group of cases concerns the failure of the national authorities to comply with numerous administrative court decisions delivered in favour of the applicants between 1996 and 2014, annulling various permits required for the operation of a gold mine, three thermal power plants and a starch factory on grounds of risk to public health and environment (violations of Article 6 in all cases and also of Article 8 in the cases concerning the gold mine).

3.7. Domestic Violence

27. The *Opuz* group of cases[17] concerns the failure of the authorities to protect women from domestic violence, despite having been reasonably informed of real and imminent risks and threats to those women (Articles 2 and 3). In the cases of Opuz, M.G. and Halime Kılıç, the Court also found that the failure to protect the women was discriminatory on grounds of gender (violation of Article 14 in conjunction with Articles 2 and 3).

[12] *Alparslan Altan v Türkiye* – see here for status of implementation.
[13] *Oya Ataman v Türkiye* – see here for status of implementation.
[14] *Piskin v Türkiye* – see here for status of implementation.
[15] *Bilgen v Türkiye* – see here for status of implementation.
[16] *Genç and Demirgan v Türkiye* – see here for status of implementation.
[17] *Opuz v Turkiey* – see here for status of implementation.

28. The Court expressed concerns at the lack of effective preventive measures to protect women facing domestic abuse, specific failings in the legislation relating to domestic violence, as well as the lack of sufficient deterrent and protective effects in the criminal law system stemming from a degree of tolerance of domestic violence by the authorities.

29. Positive recent developments include the recent high-level public statements against domestic violence, legislative amendments made in the Criminal Code and Code of Criminal Procedure. However, concerns persist that the number of domestic violence victims remains persistently high.

3.8. Ineffective investigations into deaths, torture or ill-treatment by members of security forces

30. The *Bati and Others* Group[18] of judgments concerns the ineffectiveness of investigations, criminal prosecutions and disciplinary proceedings in relation to killing, torture, ill-treatment and the excessive use of force by the police and security forces ("state agents") between 1993 and 2013, including in the course of arrests, during police custody and interrogation, and while dispersing peaceful demonstrations (procedural violations of Articles 2 and 3 of the Convention). The Court identified a number of shortcomings which created an atmosphere of impunity.

31. Given the nature of the issues, individual measures (including reopening investigations) are required, as well as general measures to ensure a more effective approach to investigating torture and unlawful killings in the future. Prosecution in respect of a number of cases is time-barred as the statute of limitations remains in place for all crimes, except torture. Whilst the Minister of Justice, on 20 April 2022, reiterated the zero-tolerance-to-torture approach and promised that perpetrators would be punished, NGOs allege that torture and ill-treatment by law enforcement officers continue in an increasing trend (see the rule 9 submission DH-DD(2022)829).

3.9. Unjustified/excessive use of force by security forces

32. The *Erdoğan and Others group*[19] of cases concern deaths as a result of unjustified and excessive force used by members of the security forces during military and police operations, including use of lethal force to prevent an escape even if the suspect poses no real threat to anyone (the *Ulufer* case) and the failure to take all the necessary safety measures to reduce any risk to life to the extent possible during military operations (substantive violations of Articles 2 and 3). Failure to carry out effective investigations into these deaths also leads to procedural violations.

33. General measures are required to prevent repeated violations, which include measures to prevent violations on account of unjustified and/or excessive use of force by members of security forces (the police, gendarmerie or village guards); measures to ensure that military operations are prepared and supervised to prevent any risk to life; safety measures taken around military zones containing explosive material; addressing shortcomings in investigations concerning anti-terror operations; and training.

3.10. Review of aggravated life sentences

34. The *Gurban* Group[20] of cases concern violations of the prohibition of torture and inhuman or degrading treatment or punishment on account of the applicants' sentences to aggravated life imprisonment without any prospects of release or any adequate review mechanism of these sentences after a certain minimum term (Article 3). On 13 October 2022, the Committee received an action report (DH-DD(2022)1088). According to the current legislation on the enforcement of sentences and security measures, individual serving sentences of aggravated life imprisonment for crimes against the security of the State are not entitled to apply, at any time, for release on legitimate penological grounds. As regards the general measures, legislative amendments are required.

[18] *Bati and others v Türkiye* – see here for status of implementation.
[19] *Erdoğan and others v Türkiye* – see here for status of implementation.
[20] *Gurban v Türkiye* – see here for status of implementation.

3.11. Freedom of thought, conscience and religion – treatment of the Alevi faith; treatment of conscientious objectors, including Jehovah's Witnesses; treatment of Jehovah's Witnesses

35. The *Izzettin Doğan*[21] group of cases concerns the failure within the Turkish legal framework to grant legal recognition to the Alevi faith, thus depriving its followers of the right fully to practice their faith (violations of Article 9), as well as discriminatory differences in treatment between followers of the Alevi faith and followers of the majority understanding of Islam (violation of Article 14 taken in conjunction with Article 9). Finally, the Court found that the content of the religious culture and ethics classes in primary and secondary schools, and their compulsory nature with only limited possibilities of exemption, "offers no appropriate options for the children of parents who have a religious or philosophical conviction other than that of Sunni Islam" (violation of Article 2 of Protocol No. 1). Generally, the Court found that "the attitude of the State authorities towards the Alevi community, its religious practices and its places of worship is incompatible with the State's duty of neutrality and impartiality and with the right of religious communities to an autonomous existence".

36. The *Ülke*[22] group of cases concerns repetitive prosecutions and convictions of pacifists and conscientious objectors for refusing to carry out compulsory military service compelling them to lead a clandestine life amounting to "civil death" (violations of Article 3). The positive obligation under Article 9 requires states to make available an effective and accessible procedure which would enable individuals to establish whether they were entitled to conscientious objector status.

37. The *Association for Solidarity with Jehovah's Witnesses*[23] group of cases concerns a violation of the right to freedom of religion on account of the application of urban planning regulations which made it impossible for two small congregations of the Jehovah's Witnesses to obtain a place of worship (violation of Article 9).

3.12. Disability discrimination in access to education

38. The *Çam*[24] case concerns a violation of the right not to be discriminated against in conjunction with the right to education on account of the refusal of by the music academy to enrol a blind child despite her having passed competitive entrance examination (a violation of Article 14 in conjunction with Article 2 of Protocol No. 1).

3.13. Inter-State Case – Cyprus v Turkey

39. The *Cyprus v Turkey*[25] case concerns 14 violations in relation to the situation in the northern part of Cyprus since the military intervention by Turkey in July and August 1974 concerning:

- Greek Cypriot missing persons and their relatives (violation of Articles 2, 3 and 5). Related to this is the *Varnava v Turkey*[26] case which concerns the lack of effective investigations into the fate of Greek Cypriots who disappeared during the Turkish military operations in Cyprus in 1974.
- Property rights of displaced Greek Cypriots (violation of Article 8 and 13 and Article 1 of Protocol No. 1). Related to this is the *Xenides-Arestis* group of cases.[27]
- Living conditions of Greek Cypriots in the Karpas region of the northern part of Cyprus (violation of Articles 3, 8, 9, 10 and 13 and Articles 1 and 2 of Protocol No. 1).
- Rights of Turkish Cypriots living in the northern part of Cyprus relating to the competence of military courts (violation of Article 6).

40. Following the measures adopted by Turkey, the Committee of Ministers has closed supervision relating to: (i) living conditions of Greek Cypriots in northern Cyprus as regards secondary education, censorship of schoolbooks, freedom of religion and property rights; and (ii) rights of Turkish Cypriots living in the northern part of Cyprus (competence of military courts).

41. As regards missing persons, the Committee on Missing Persons (CMP) continues its search for missing persons by exhumation activities and submitting any new relevant information on possible burial sites. As of 31 December 2022 the CMP had found the remains of 1,195 persons and identified 1,028 persons (out of 2,002 on the missing persons list from both communities). Amongst the identified persons, 736 were Greek

[21] *Izzettin Doğan v Türkiye* – see here for status of implementation.
[22] *Ülke v Türkiye* – see here for status of implementation.
[23] *Association for Solidarity with Jehovah's Witnesses and Others v Türkiye* – see here for status of implementation.
[24] *Çam v Türkiye* – see here for status of implementation.
[25] *Cyprus v Turkey* (merits) – see here for status of implementation.
[26] *Varnava v Turkey.*
[27] *Xenides-Arestis v Turkey* – see here for status of implementation.

Cypriots (out of 1,510 missing Greek Cypriots). The Turkish authorities submit that in 1997 they provided the CMP with all the information at their disposal about possible burial sites. Recent information has been received from Türkiye on 2/1/23 which is being analysed. Access to military areas has been a contentious issue. In 2015, the Turkish authorities provided access to 30 areas and in June 2019 to 30 additional areas.

42. As regards criminal investigations, the Missing Persons Unit (MPU) was set up in the northern part of Cyprus in 2010 to conduct investigations into the death of Greek Cypriots whose remains have been located and identified by the CMP. The MPU has opened 725 criminal investigations, received written statements from 662 witnesses and finalised 515 files. The Attorney General's Office subsequently finalised 465 of these investigations. NGOs have criticised the process and have instead called for a Truth Commission (DH-DD(2021)150).

43. As concerns property rights, following the *Xenides-Arestis* judgment, Law No. 67/2005 on the Compensation, Exchange or Restitution of Immovable Property ("the IPC Law") was adopted, setting up a modified Immovable Property Commission (IPC). This Law enables Greek Cypriot owners to apply to the IPC for restitution, compensation and/or exchange, as well as for compensation for loss of use, in respect of immovable property located in the northern part of the island that was registered in their names on 20 July 1974 (or in the name of a person of whom they are the legal heirs). Concerns have been expressed that property is being affected by property transfers and construction activities. The Turkish authorities have noted that, according to the IPC law, following a decision by IPC providing for immediate restitution of properties or for their restitution after the solution of the Cypriot problem, they cannot be sold or developed without the consent of their Greek Cypriot owners. The Turkish authorities consider that this part of the judgment should be closed given the functioning of the IPC, the amount already paid in awards, and the assessments of the ECtHR.

44. In the *Cyprus v. Turkey* (just satisfaction) judgment,[28] the Grand Chamber ruled that Turkey was to pay the Government of Cyprus 30,000,000 euros in respect of non-pecuniary damage suffered by the relatives of missing persons and 60,000,000 euros in respect of non-pecuniary damage (not concerning property rights) suffered by the enclaved Greek Cypriot residents of the Karpas peninsula. The Court indicated that these amounts should be distributed by the Government of Cyprus to the individual victims under the supervision of the Committee of Ministers. In September 2021, the Committee adopted Interim Resolution CM/ResDH(2021)201 strongly urging the Turkish authorities to abide by their unconditional obligation and pay the just satisfaction awarded by the Court in 2014 in this case, together with the default interest accrued, without further delay. The just satisfaction remains unpaid for this case, as for the *Varnava* and *Xenides-Arestis* group of cases, notwithstanding the interim resolutions of the Committee of Ministers. This includes non-payment of just satisfaction since 2007 in the oldest case of just satisfaction in the *Xenides-Arestis* group.

45. Further elements of the Cyprus v Turkey judgment have yet to be examined, including

1) Breach of the right to respect for private and family life and home of Greek Cypriots living in northern Cyprus, in particular arising from the restrictions on family visits and the surveillance of their contacts and movements (violation of Article 8);

2) Discrimination against Greek Cypriots living in the Karpas region amounting to degrading treatment due to the restrictions imposed on their community (violation of Article 3). This finding was based in particular on: restrictions imposed on freedom of movement; surveillance to which the community was subjected; absence of prospects for renewal or enlargement of the community; absence of secondary education; and impossibility to bequeath immovable property to members of the family.

3) Lack of remedies in respect of the authorities' interference with the rights of Greek Cypriots living in northern Cyprus under Articles 3, 8, 9 and 10 of the Convention and under Article 2 of Protocol No. 1 (violation of Article 13).

[28] *Cyprus v Turkey (just satisfaction).*