



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VASSILIOU AND OTHERS v. CYPRUS

(Application no. 58699/15)

JUDGMENT

Art 2 (procedural) • Effective investigation into disappearance of relative, resulting in identification of remains and ascertainment of circumstances of death • Context of State being hurt by invasion and facing considerable number of missing persons

Art 8 • Positive obligations • Private and family life • Failure to inform relatives of progress of investigation, possible death and location of relative's body in common grave • Margin of appreciation on sensitive issue of disturbing graves overstepped

Art 13 (+ Art 8) • Existence of effective remedies

STRASBOURG

31 August 2021

FINAL

30/11/2021

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vassiliou and Others v. Cyprus,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Paul Lemmens, *President*,

Georgios A. Serghides,

Dmitry Dedov,

Darian Pavli,

Anja Seibert-Fohr,

Peeter Roosma,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 58699/15) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by four Cypriot nationals, Ms Georgia Vassiliou, Mr Vassilis Vassiliou, Ms Maria Vassiliou, and Ms Antonia Kyriakou (“the applicants”), on 24 November 2015;

the decision to give notice to the Cypriot Government (“the Government”) of the complaints under Articles 2, 3, 8, and 13 of the Convention concerning the State’s duty to investigate a disappearance and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 20 April and 29 June 2021,

Delivers the following judgment, which was adopted on the last mentioned date:

INTRODUCTION

1. The case concerns the State’s responsibility for the distress experienced by the wife and children of a Greek-Cypriot reservist who had gone missing in action during the 1974 Turkish invasion in northern Cyprus and who was discovered, twenty-six years later, to have been executed by the invaders and buried in the State’s territory all along.

THE FACTS

2. Ms Georgia Vassiliou was born in 1945 and lives in Xylofagou. Mr Vassilis Vassiliou was born in 1968 and lives in Vrysoules. Ms Maria Vassiliou was born in 1967 and lives in Xylofagou. Ms Antonia Kyriakou was born in 1973 and lives in Xylofagou. They were represented by Mr A. Demetriades, a lawyer practising in Nicosia, Cyprus.

3. The Government were represented by their Agent, Mr C. Clerides, Attorney General of the Republic of Cyprus.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. UNNOTICED DEATH OF THE APPLICANTS' RELATIVE ON THE BATTLEFIELD IN 1974

5. The applicants are the widow and children of Mr Christofi Vassiliou Pashias ("Mr Pashias"). They are Greek Cypriots and Orthodox Christians.

6. In July 1974 the Turkish army invaded northern Cyprus. Mr Pashias, then a 29-year-old married father of three and a National Guard reservist, was mobilised.

7. In between hostilities he visited his home village of Xylofagou. In August 1974, when the Turkish offensive was about to resume, he decided to return to the front lines. Shortly after he left, his wife sent him their son's baptismal cross pendant.

8. Mr Pashias' unit was deployed to defend the Ayios Pavlos suburb of Nicosia. On 13 August 1974 Mr Pashias, together with three fellow villagers, found himself at an army outpost opposite the camp of the Turkish Contingent in Cyprus (TOΥΡΔΥΚ).

9. In the morning of 14 August 1974 the Turkish troops launched an attack on the National Guard defences and overran Mr Pashias' outpost. Witnesses saw the Turks capturing Mr Pashias and heard him cry out in despair for his children ("*Παναγία μου, τα μωρά μου*"). That was the last that was seen or heard of him by his fellow Greek Cypriots.

10. As would be established in 2010 (see § 32 below), at some point between 14 and 17 August 1974, the Turkish troops executed Mr Pashias.

11. Mr Pashias' unit lost eighteen men in the fighting, and the Turkish troops assumed control of the battlefield.

II. BATTLEFIELD CLEARANCE AND BURIAL OF CASUALTIES

12. The United Nations brokered a ceasefire and on 17 August 1974 the National Guard search and recovery teams were allowed to clear the battlefield. They worked from 2 p.m. to 3 p.m. in temperatures reaching 42°C and recovered eighteen bodies from the positions of Mr Pashias' unit, including that of Mr Pashias.

13. By then, most of the bodies were decayed, deformed, and unrecognisable. Mr Pashias' body was wearing a wristwatch and the pendant that his wife had sent him. There were two silver teeth in his mouth.

14. The bodies were taken to Lakatamia Military Cemetery (*Στρατιωτικό Κοιμητήριο Λακατόμιας*, "Lakatamia") in a government-controlled area. The man in charge of conducting the burials did not attempt to identify Mr Pashias' body in the mistaken belief that the recovery teams had already

done so. The bodies were buried in an unmarked common grave. Mr Pashias was noted in the records as “unknown”.

15. Some members of the Hellenic Contingent in Cyprus (ΕΛΔΥΚ) killed in the hostilities were also buried at Lakatamia.

16. On an unspecified date, three slabs bearing other people’s names were placed on top of the spot where Mr Pashias was buried. The bodies of those people were not in the grave.

III. INITIAL INVESTIGATION OF THE DISAPPEARANCE AND DECLARATION AS MISSING

17. In September 1974 military investigators questioned Mr Pashias’ war comrades in order to investigate what had happened to him. The investigators concluded that Mr Pashias had been taken prisoner or killed, and reported him to his family as missing as a result of the Turkish action. The family searched in vain for Mr Pashias in National Guard camps.

18. In 1974 the wife of another man killed in Ayios Pavlos was able to locate and covertly dig up the body of her husband from a fresh grave at Lakatamia. In his pockets she found an ID card, a marching order, and some money.

19. On 3 February 1975 the first applicant filled in a form from the State Service for Missing Persons (*Υπηρεσία Αγνοουμένων*) in which she shared with the authorities the information she had gathered about her husband’s whereabouts.

20. Between 1975 and 1978 investigators questioned Mr Pashias’ father-in-law, one of his comrades and a fellow villager. The testimony confirmed that Mr Pashias had last been seen in the hands of the Turkish troops.

IV. EXHUMATIONS AT LAKATAMIA IN 1979

21. In 1979 the Government permitted the Hellenic Contingent in Cyprus to exhume its dead at Lakatamia.¹ The remains were returned to the families in Greece. As was discovered later, some bones belonging to different persons had been mixed, which resulted in misidentification.

V. INVESTIGATIONS FROM 1981 TO 1991

22. In 1981 investigators questioned one of Mr Pashias’ war comrades who had fought at a nearby outpost. His testimony added nothing new.

23. In 1991 the investigators talked to the first applicant about newly discovered photographs of Mr Pashias.

¹ See *Tziliyaki and Others v. Cyprus* (dec.), no. 23082/07, 14 October 2014.

VI. SECRET INVESTIGATION FROM 1992 TO 1993

24. Alerted by newspaper publications, on 11 March 1992 the Greek-Cypriot representative of the UN-sponsored Committee on Missing Persons requested the Service for Missing Persons to investigate the recovery of the bodies from the battlefield in Ayios Pavlos in August 1974. The Service carried out that request and on 26 November 1993 issued a classified report which concluded that those who had gone missing in that area at that time “must” be searched for at Lakatamia, where they had “obviously” been buried as unknown (*“Αγνοούμενοι ... πρέπει ν’ αναζητηθούν από το κοιμητήριο Λακατάμιας όπου προφανώς τάφηκαν ...”*).

25. The applicants were not informed about the report.

VII. INVESTIGATION IN 1995

26. In 1995 the investigators questioned Mr Pashias’ father-in-law, the comrade they had questioned in 1975 and another fellow villager. Their testimony added nothing new.

VIII. EXHUMATIONS AT LAKATAMIA IN 1999, IDENTIFICATION AND REBURIAL

27. In 1996 the authorities established a DNA bank for identification purposes. Two of the applicants gave blood samples.

28. In 1999, after identification using DNA analysis became available in Cyprus, the authorities proceeded to carry out exhumations at Lakatamia.

29. On 9 July 1999 Mr Pashias’ remains were disinterred, together with the remains of the three fellow villagers who had died with him.

30. On 4 November 1999 police officers visited the first applicant at her home and told her about the circumstances of her husband’s disappearance as documented by the Service for Missing Persons.

31. On 10 July 2000 the Official Gazette of the Republic of Cyprus published the first ever official list of persons missing as a result of Turkish action. Mr Pashias was on that list.

32. On 13 September 2000 the authorities identified Mr Pashias’ remains and later the same month informed the applicants of the identification. Forensic anthropologists told the applicants that the bones showed signs of torture and execution.

33. On 15 October 2000 the authorities returned Mr Pashias’ remains and his personal effects (including the wristwatch and cross) to the applicants. Later the same day Mr Pashias and his comrades were laid to rest in Xylofagou.

IX. THE APPLICANTS' ACTION AGAINST THE STATE AND THE JUDGMENT OF THE DISTRICT COURT

34. On 31 December 2002 the applicants sued the Government in the Nicosia District Court for negligence and for violation of their rights under the Convention. The applicants relied on Article 2 (failure to investigate), Articles 3 and 8 (distress), and Article 9 (burial without proper rituals).

35. On 5 November 2010 the court partly granted those claims (case no. 13863/2002). The court's reasoning was as follows.

36. The court first found fault with the National Guard's mortuary operations in 1974. The search and recovery teams had failed to identify Mr Pashias, to collect his personal effects or to photograph his body, as was required by army field manuals and as was possible in the specific historical circumstances. The burial team had also failed to identify the eighteen casualties from Ayios Pavlos or to mark their grave. Had that grave been marked off from the hundreds of other graves, the search for the missing persons could have been more focused.

37. The court next found the authorities at fault for delaying the exhumation. Had Mr Pashias been exhumed shortly after his death, he might have been identified by the combination of the two silver teeth in his mouth, his personal effects (possibly more numerous in 1974 than in 2000), and the battlefield from which his body had been recovered. It was also likely that Mr Pashias had written his particulars on a piece of paper and put it in his left breast pocket, as he had been ordered to do on the eve of the battle.

38. The authorities had known about the anonymous graves at Lakatamia yet it was not until 1992 that they had seriously investigated who might be buried in them. The evidence needed for such an investigation had always been available.

39. The court admitted that the authorities had proceeded to carry out identifications soon after DNA analysis had become available to them.

40. The court rejected the applicants' negligence claim because their distress could not be regarded as "damage" for the purposes of the tort of negligence.

41. The court found that Article 2 of the Convention obliged the State to investigate the disappearance effectively, even though that disappearance had been caused by Turkey. It found breaches of Articles 3 and 8 of the Convention on account of the applicants' anguish but dismissed the complaint under Article 9.

42. The court awarded 50,000 euros (EUR) to the first applicant and EUR 25,000 to each of the remaining applicants. It also awarded the litigation costs.

X. JUDGMENT OF THE SUPREME COURT

43. On 17 December 2010 the State appealed against the judgment of the District Court (appeal no. 381/2010).

44. On 26 May 2015 the Supreme Court allowed the appeal and set aside the first-instance judgment. The court's reasoning was as follows.

45. The Supreme Court confirmed that the State was responsible under Article 2 of the Convention for the investigation of Mr Pashias' disappearance even though Mr Pashias had last been seen in Turkey's custody.

46. Nevertheless, the Supreme Court absolved the State of responsibility for the disorganised battlefield clearance and burial.

47. As the Supreme Court knew from its case-law, after the July 1974 *coup d'état* the whole State apparatus had broken down. Coup plotters had imprisoned many military leaders, and mobilisation mechanisms had been disrupted. Witness testimony showed that the National Guard had been understaffed and had had to act without proper planning, and as a result had been retreating in disarray. It was amid such chaos that Turkey had launched its second offensive, occupied 37% of the national territory, and caused mass displacement of the population. In these circumstances, it was only owing to individual people's own sense of duty that the State could perform at least its basic functions.

48. While the District Court's selective use of evidence had painted a picture of a calm operational environment in the aftermath of the Ayios Pavlos battle, that environment should more appropriately have been described as "hellish". The search and recovery teams had only had one hour to do their work under the scorching sun of a Cypriot August afternoon. The discomfort that they had felt from the sight and smell of the decomposing flesh might have been unjustified, yet it was real. But scientific evidence, which the District Court had ignored, suggested that even in a peacetime setting Mr Pashias' identification would not have been guaranteed.

49. As to exhumation, the Convention did not oblige the State to open the mass grave earlier than it did. No reliable genetic method of identification had been available in 1974. Remains in a state of advanced decomposition, even if accompanied by personal effects, were insufficient. Exhumation would not have been a proper solution given the post-invasion situation in the country, the "political dimensions of the issue", and the need for Turkish cooperation.

50. The 1993 classified report had provided a "satisfactory indication" (*αποχρώσα ένδειξη*) of Mr Pashias' location.

51. The State had never stopped searching for Mr Pashias. The procedural obligation under Article 2 of the Convention had arisen not after the discovery of the possible burial site in 1993, but after DNA analysis had

become available. That obligation had been met. The procedural obligation under Article 3 had also been met.

52. The Supreme Court dismissed the applicants' claims and quashed the award of compensation but relieved the applicants of the obligation to pay litigation costs in view of the jurisprudential value of the case.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

53. The applicants complained that the State had failed to investigate effectively the fate of their missing relative as required by Article 2 of the Convention. As far as relevant, that Article reads:

“1. Everyone's right to life shall be protected by law.”

A. Admissibility

1. The Government

54. The Government argued that this complaint was inadmissible for four reasons.

(a) Six months

55. The Government affirmed that the applicants had missed the six-month time-limit for applying to the Court. They should have done so before 1991 (*Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, ECHR 2009). By that time they should have realised that the investigation had stalled, regardless of whether Turkey or Cyprus was to conduct it. The applicants could not have had any expectation of progress in the investigation because, by their own admission, they had not been involved in it until 2000.

(b) Compatibility *ratione personae* and *materiae*

56. The Government contended that Article 2 did not oblige Cyprus to investigate the fate of Mr Pashias as he had last been seen in Turkey's custody. Neither did Article 2 oblige Cyprus to exhume his body sooner. The State's only obligation was to identify his body at the time of burial.

(c) Compatibility *ratione temporis*

57. The Government submitted that by successive declarations made before the entry into force of Protocol No. 11 to the Convention, they accepted the competence of the former European Commission of Human Rights to receive applications submitted subsequently to 31 December 1988 “in relation to any act or decision occurring or any facts or events arising

subsequently to 31 December 1988”. The burial of Mr Pashias in 1974 and the investigation between 1974 and 31 December 1988 into his disappearance were therefore outside the Court’s temporal jurisdiction. The events between 1989 and 2000 were within the Court’s jurisdiction.

(d) Substance

58. The Government argued that the complaint was manifestly ill-founded as well.

59. In their opinion, it was for the State to decide when to carry out the exhumation. The State’s experience of hasty exhumations at Lakatamia in 1979 and the resulting misattribution of remains (*Tziliivaki and Others v. Cyprus* (dec.), no. 23082/07, 14 October 2014) had taught the State to wait for a reliable method to appear. Releasing the wrong remains to relatives was bad enough where a person’s death was certain. It would be even worse where the person’s death was uncertain.

60. There was no way in which the State could have discovered Mr Pashias’ fate before 2000. He had last been seen alive and hence had to be considered missing. The 1993 classified report had given only a “satisfactory indication” that Mr Pashias might be dead and buried and thus did not permit to draw conclusions about his fate or to inform his relatives.

61. Mr Pashias’ death could be confirmed only by DNA identification, which had become available as late as 1999. Exhuming the body without being able to reliably identify it would only have added to the relatives’ anguish.

62. The Government concluded by saying that the delay of twenty-six years between Mr Pashias’ disappearance and his identification was not a sign of the inadequacy of the investigation.

2. The applicants

(a) Six months

63. The applicants contended that they had applied to the Court in time, namely within six months of the Supreme Court’s judgment. That judgment was to be considered the final decision in their case. They could not have applied earlier because the State had led them to believe that Turkey was responsible for the disappearance, and it was not until 2000 that they had discovered that their own State might be responsible too.

(b) Compatibility *ratione materiae*

64. The applicants claimed that Article 2 required the State not only to identify the body at the time of burial but also to locate and exhume it sooner than the State had done in the present case.

(c) Compatibility *ratione temporis*

65. The applicants averred that a State had to investigate a disappearance even if that disappearance had happened before the Convention's entry into force in respect of that State.

(d) Substance

66. The applicants affirmed that the first serious attempt to locate Mr Pashias had been made almost twenty years after his disappearance, even though the evidence had always been available. It had taken the State another six years to exhume his remains.

67. They further affirmed that DNA analysis was not the only method of identification. Less modern and accurate, but still credible, methods existed. Mr Pashias could have been identified by his personal effects and pre-death anatomical (dental) records. The State had employed those traditional methods to identify the Greek (ΕΛΔΥΚ) soldiers, but, inexplicably, not their Greek-Cypriot counterparts.

68. The applicants closed their argument by submitting that they should have been informed of the 1993 report immediately.

3. The Court

(a) Six months

69. The Court cannot accept the Government's argument that the starting point for the six-month time-limit set in *Varnava* (cited above, § 170) applies regardless of which State, Turkey or Cyprus, was to investigate the disappearance. Unlike in *Varnava*, in the present case the applicants accuse Cyprus, not Turkey. They discovered that they had a claim against Cyprus only in September 2000, after which they pursued the judicial domestic remedies at their disposal and introduced their application within six months of the final decision, as required by Article 35 § 1 of the Convention. This objection must therefore be dismissed.

(b) Compatibility *ratione personae*

70. The Court reiterates that the State's jurisdiction extends to events which happen in its own territory, abroad but under the authority and control of its agents, or abroad but in an area it controls (see *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, §§ 131-142, ECHR 2011).

71. The Court further reiterates that, as a rule, a person's disappearance in life-threatening circumstances must be investigated by the State under whose jurisdiction that person disappeared (see *Emin and Others v. Cyprus, Greece and the United Kingdom* (dec.), nos. 59623/08 and 6 other applications, 3 June 2010).

72. Mr Pashias' countrymen last saw and heard him in the hands of the Turkish troops who had captured him in combat on the outskirts of Nicosia during the active phase of the invasion. He thus disappeared under the authority and control of the agents of Turkey and, for this reason, it was incumbent on the authorities of that State to conduct an effective investigation aimed at clarifying his whereabouts and fate (see *Cyprus v. Turkey* [GC], no. 25781/94, § 136, ECHR 2001-IV).

73. The applicants, however, brought their application against Cyprus, complaining, in particular, about the ineffectiveness of the investigation into Mr Pashias' fate by the Cypriot authorities. The Court must thus examine whether the facts complained of fell within the jurisdiction of Cyprus as well.

74. While not decisive, the Court notes that the Cypriot authorities recovered the bodies in August 1974 from the battlefield and buried them at Lakatamia in an area under their control (see paragraph 14 above). They also initiated an investigation in September 1974 (see paragraphs 17–20 above). More importantly, in November 1993, nineteen years after the invasion, they discovered that Mr Pashias was likely to be searched for at Lakatamia (see paragraph 24 above). At the latest from that date, it was within the jurisdiction of Cyprus to investigate the fate of Mr Pashias, likely to be buried in an area under their control.

75. In addition, both domestic courts acknowledged the State's responsibility under Article 2 of the Convention.

76. The Court thus concludes that in the particular circumstances of the present case, the investigation into Mr Pashias' fate fell within the jurisdiction of Cyprus. This objection must therefore also be dismissed.

(c) Compatibility *ratione temporis*

77. As to the alleged obligation to identify the body before burying it in 1974, the Court observes that it has already declared the related part of the application inadmissible as being incompatible *ratione temporis* with the provisions of the Convention (decision of 21 November 2017 by the President of the Section, acting as a single judge (Rule 54 § 3 of the Rules of Court)). Pursuant to Article 27 § 2 of the Convention, such a decision is final. This part of the complaint is thus no longer pending before the Court.

78. As to the duty to investigate the fate of Mr Pashias, the Court agrees with the Government that it has no temporal jurisdiction over the quality of the investigation between 1974 and the end of 1988 (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 141, ECHR 2013). As to the period between 1989 and 2000, the Court notes that the parties accept its jurisdiction.

(d) Substance

79. As to the substance of the complaint, the Court considers, in the light of the parties' submissions, that it raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

80. No other ground for declaring the complaint inadmissible being established, it should be declared admissible.

B. Merits

81. The applicants complained that the State had failed to investigate effectively the fate of their missing relative as required by Article 2 of the Convention.

82. The Court reiterates that when a person disappears in State custody and in life-threatening circumstances there must be an effective official investigation of that disappearance (see *Cyprus v. Turkey*, cited above, §§ 131–32). Consequently, it was Turkey's responsibility to start such an investigation into the disappearance of Mr Pashias who had last been seen in Cypriot territory but under the control of Turkey's agents.

83. After receiving indications that Mr Pashias was buried at Lakatamia, the Cypriot authorities were expected to take steps that would lead to the identification of his remains and to ascertaining, to the extent possible, the circumstances of his death.

84. The authorities have complied with this positive duty. In the period which the Court may and should examine, from 1989 (the beginning of the Court's temporal jurisdiction, see paragraph 57 above) to 2000 (the year when Mr Pashias was exhumed), the authorities continued collecting evidence and examining witnesses (see paragraphs 23 and 26 above) and shared their findings with the first applicant (see paragraph 30 above). More crucially, in 1993 they were able to narrow down on Mr Pashias' likely burial (see paragraph 24 above). Finally, they succeeded in recovering and positively identifying Mr Pashias' remains and ascertaining the circumstances of his death. Furthermore, the Court cannot lose sight of the fact that the respondent State was hurt by the invasion and was faced with a considerable number of people who had gone missing (compare with *Palić v. Bosnia and Herzegovina*, no. 4704/04, § 64, 15 February 2011).

85. There has, accordingly, been no violation of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

86. The applicants complained that by failing to provide them with any information about the fate of their missing relative, the State had caused

them distress in breach of Article 3 or, alternatively, Article 8 of the Convention.

87. As master of the legal characterisation of facts (*Guerra and Others v. Italy* [GC], no. 14967/89, § 44, *Reports of Judgments and Decisions* 1998-I) the Court will examine this complaint under Article 8 alone. As far as relevant, this Article reads:

“1. Everyone has the right to respect for his private and family life

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Arguments of the parties

1. The Government

88. The Government argued that this complaint was manifestly ill-founded. They repeated their substantive arguments under Article 2 and stressed that until Mr Pashias’ identification in 2000 the authorities had had little to report to the applicants. Still, the authorities had stayed in contact with the applicants and had been neither dismissive nor callous. The applicants’ suffering had not been caused by the State.

2. The applicants

89. The applicants submitted that the years-long uncertainty about their relative’s fate had caused them anguish. They had not been able to achieve closure on their ambiguous loss or rebuild their lives.

90. Deliberately or through ignorance, the State had for years offered them the illusion that Mr Pashias might be in Turkish captivity and that one day the State might be able to bring him back alive. To their disappointment, the very same State had turned out to be complicit in his disappearance.

91. The applicants also felt offended by the State’s dismissiveness. Even after Mr Pashias had been exhumed, the State had continued to portray him as “missing” (see paragraph 31 above) and had rekindled their hopes, only to dash them in a matter of months.

92. Lastly, the applicants submitted that they had not been able to lay their relative to rest in time and with the proper rituals.

B. The Court

1. Admissibility

93. The Court considers, in the light of the parties' submissions, that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible being established, it should be declared admissible.

2. Merits

94. The Court reiterates that Article 8 not only prohibits the State from arbitrarily interfering in people's private and family lives but may also oblige it to act to ensure respect for those lives. Whether the State has complied with such a "positive obligation" will depend on the balance between the competing interests (see *Hämäläinen v. Finland* [GC], no. 37359/09, §§ 62 and 65, ECHR 2014).

95. The Court further reiterates that when someone dies unbeknown to relatives but known to the State, the State has a positive obligation under Article 8 (private and family life) to notify the relatives so that, among other things, they can arrange a proper burial (see *Lozovyye v. Russia*, no. 4587/09, §§ 26 and 34–38, 24 April 2018).

96. In the present case the Government denied having known that Mr Pashias was dead and buried, but in the Court's opinion the language used by the Service for Missing Persons in its report of 1993 (see paragraph 24 above) carries a higher degree of certainty than the mere "satisfactory indication" suggested by the Government.

97. The Court accepts that in implementing their positive obligations under Article 8 the State enjoys a certain margin of appreciation (*Hämäläinen*, cited above, § 67). Disturbing graves is a "sensitive issue", and States therefore are afforded a wide margin in deciding whether or not to exhume mortal remains (see *Elli Poluhas Dödsbo v. Sweden*, no. 61564/00, § 25, ECHR 2006-I, and *Dražković v. Montenegro*, no. 40597/17, § 52, 9 June 2020). In the present case, many people's graves would have to be disturbed in order to locate Mr Pashias: he shared his grave with seventeen others, that common grave was itself lost among many other graves, and he lay under three slabs bearing other people's names.

98. Nevertheless, the Court considers that in the present case the State has overstepped its margin of appreciation.

99. After the report of 1993 about Mr Pashias' likely location, the authorities should have informed the applicants that the investigation was making progress and that their relative might be dead and buried in the

unoccupied part of the country. By doing so, the authorities could have alleviated the applicants' suffering (see *Varnava*, cited, above, § 200).

100. The Court is also concerned by the Supreme Court's reference to unnamed "political dimensions" of the issue as a justification for delaying the exhumation (see paragraph 49 above).

101. In sum, the Court finds that the State has not demonstrated an interest that could outweigh that of the applicants. It follows that the authorities failed to comply with their positive obligation and that, accordingly, there has been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

102. Lastly, the applicants complained under Article 13 of the Convention that they had no effective remedy for the violations of their rights, in particular, because the State had denied its responsibility for their relative's disappearance and because they had received no compensation. Article 13 reads:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

103. The applicants failed to specify a substantive right under the Convention, the violation of which they wished to have remedied. Article 13 applies only in conjunction with a right provided for in the Convention and cannot be invoked independently (see *Diallo v. the Czech Republic*, no. 20493/07, § 55, 23 June 2011). However, since the Court "knows the law" (see paragraph 87 above), it decides to examine this complaint under Article 13 read in conjunction with Article 8.

A. Arguments of the parties

1. *The Government*

104. The Government argued that this complaint was manifestly ill-founded because the applicants did have an effective remedy. The investigation had resulted in the discovery of their relative's body and an explanation of the circumstances of his death.

105. It was true that the Government had not included the applicants in the list of the relatives of missing persons who were entitled to compensation from Turkey as a result of the Court's judgment in *Cyprus v. Turkey* (*just satisfaction*) [GC], no. 25781/94, ECHR 2014). But no compensation had been due at that time since their relative could no longer be considered missing.

2. *The applicants*

106. The applicants contended that nobody had been held accountable for their suffering and no apology had been offered. On the contrary, throughout the domestic proceedings the State had made them feel guilty for bringing their claims against it.

107. The State had refused to pay compensation itself and had prevented the applicants from receiving compensation from Turkey in the proceedings before the Court in *Cyprus v. Turkey* (cited above).

108. By suggesting that the six-month time-limit for the complaint under Article 2 was not to be calculated from the Supreme Court's judgment (see paragraph 55 above), the Government had in essence acknowledged that the applicants had no remedy.

B. The Court

1. *Admissibility*

109. As to the applicants' argument that they were deprived of compensation to which they should have been entitled in accordance with the judgment in *Cyprus v. Turkey* (cited above), the Court observes that it has already declared the related part of the application inadmissible as being incompatible *ratione materiae* with the provisions of the Convention (decision of 21 November 2017 by the President of the Section, acting as a single judge (Rule 54 § 3 of the Rules of Court)). Pursuant to Article 27 § 2 of the Convention, such a decision is final. This part of the complaint is thus no longer pending before the Court.

110. As to the rest of the complaint, the Court considers, in the light of the parties' submissions, that it raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this part of the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible being established, it should be declared admissible.

2. *Merits*

111. The Court finds that the mere fact that the proceedings before the domestic courts resulted in a judgment that was unfavourable to the applicants does not mean that the remedies offered by Cypriot law in case of a violation as alleged by the applicants in the domestic proceedings were ineffective: the courts had jurisdiction to rule on their claim and they duly examined it (see *Vilvarajah and Others v. the United Kingdom*, 30 October 1991, § 122, Series A no. 215; *Amann v. Switzerland* [GC], no. 27798/95, § 89, ECHR 2000-II; and *Nolan and K. v. Russia* (dec.), no. 2512/04, 30 November 2006). Furthermore, Article 13 does not guarantee a remedy

against a decision by the highest domestic court (see *Crociani, Palmiotti, Tanassi, Lefebvre d'Ovidio v. Italy* (dec.), no. 8603/79 et seq., 18 December 1980, and *Aumatell i Arnau* (dec.), no. 70219/17, 11 September 2018).

112. There has, accordingly, been no violation of Article 13 of the Convention in conjunction with Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

114. As the widow, Ms Georgia Vassiliou claimed 61,000 euros (EUR) for non-pecuniary damage. As children, the other three applicants claimed EUR 30,500 each.

115. The Government considered these claims excessive in the light of the Court's case-law.

116. The Court considers it equitable to award to Ms Georgia Vassiliou EUR 18,000, plus any tax that may be chargeable, and to each of the other three applicants – EUR 9,000, plus any tax that may be chargeable.

B. Costs and expenses

1. Mr Vassilis Vassiliou

117. Mr Vassilis Vassiliou claimed EUR 4,251 in lost wages and travel expenses incurred by him in attending the domestic hearings. He described this claim as pecuniary damage, but the Court considers that it belongs rather to costs and expenses.

118. The Government opposed this claim as inconsistent with the Court's case-law.

119. The Court reiterates that it awards costs and expenses only if they were actually incurred (see *The Sunday Times v. the United Kingdom (no. 1)* (Article 50), no. 6538/74, § 23, 6 November 1980). The applicant has not supported his claim with evidence, and the Court therefore rejects it.

2. All four applicants

120. The four applicants jointly claimed EUR 14,356.82 plus value-added tax in legal costs incurred before the Supreme Court and the Court.

121. The Government opposed this claim as inconsistent with the Court's case-law.

122. Having regard to the lawyer's bills in its possession, the Court considers it reasonable to award this claim in full.

C. Default interest

123. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application, insofar as it is still pending before the Court, admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been no violation of Article 13 of the Convention in conjunction with Article 8;
5. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) to Ms Georgia Vassiliou: EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) to Mr Vassilis Vassiliou: EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) to Ms Maria Vassiliou: EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iv) to Ms Antonia Vassiliou: EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (v) to all the applicants jointly: EUR 14,356.82 (fourteen thousand three hundred and fifty-six euros and eighty-two cents), plus any value-added tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 31 August 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President