

Missing Persons in Cyprus: Observations from the past and recommendations for the future

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PCC REPORT 7/2019



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**MISSING PERSONS
IN CYPRUS:
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and recommendations
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Report 7/2019

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ISBN 978-82-7288-985-1 (online)
ISBN 978-82-343-0035-6 (print)

Cover photo: Stephanie Keszi

Production and Cover design: Crystal Graphics

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ACKNOWLEDGEMENTS

We wish to thank PRIO Cyprus and TRUTH NOW NGO for entrusting us with the ownership of the present report. Moreover, we would like to thank Achilleas Demetriades for the valuable advice and support during the preparation of the report, as well as for taking the time to review it and offer feedback. Further, our sincere thanks go to the Turkish Cypriot Human Rights Foundation and Öncel Polili for helping us initiating our inquiry regarding the Turkish Cypriot community. We would also like to thank Constantina Symeou and Stella Afxentiou for their assistance in compiling and summarizing information, in the earlier stages of the research, as well as the Lellos P. Demetriades Law Office LLC for their administrative assistance throughout the process. Last but not least, we would like to thank all those who agreed to being interviewed for the purposes of the present research. We reassure you that your personal, professional or other insight and experience have given us a unique perspective and understanding on this significant, sensitive, and above all humanitarian matter.

Note by the authors

The present report covers relevant developments from 1963 to late September 2018, to the extent possible. The issue of the Missing Persons is undoubtedly one of the most complicated and sensitive aspects of the Cyprus conflict. We hope this report will serve as a new step towards reopening the discussion on the missing persons through an innovative perspective, always with due respect to them and their families.

LIST OF ABBREVIATIONS

BNDG	National Bank of Genetic Data (Argentina)
CCDH	Consultative Human Rights Council (Morocco)
CED	Convention for the protection of All Persons from Enforced Disappearance
CEH	Historical Clarification Commission (Guatemala)
CMP	Committee on Missing Persons
CoE	Council of Europe
CoM	Committee of Ministers
CONADEP	National Commission on the Disappearance of Persons (Argentina)
EAAF	Argentine Forensic Anthropology Team (Argentina)
ECHR	European Convention of Human Rights 1950 (Convention for the Protection of Human Rights and Fundamental Freedoms)
ECtHR	European Court of Human Rights
FEMED	Euro-Mediterranean Federation Against Enforced Disappearances
ICAED	International Coalition against Enforced Disappearances
ICRC	International Committee of the Red Cross
IER	Justice and Reconciliation Authority (Morocco)
MFA	Ministry of Foreign Affairs
MPU	Missing Persons Unit
NGO	Non-Governmental Organisation
PACE	Parliamentary Assembly of the Council of Europe
PRIO	Peace Research Institute Oslo
RoC	Republic of Cyprus
TJ	Transitional Justice
ToR	Terms of Reference
TCR	Truth and Reconciliation Commission
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNFICYP	United Nations Peacekeeping Force in Cyprus

INTRODUCTION

In the context of an armed conflict, one of the most pressing humanitarian issues is that of missing persons. Although undoubtedly this phenomenon affects primarily the relatives of those missing, it is widely recognised that disappearances have a ripple effect on the communities and societies where they take place, thus generating feelings of insecurity and fear.¹ Cypriots are also familiar with this reality.

Following yet another deadlock in the negotiation process at the Conference for Cyprus in Crans-Montana, Switzerland, in summer 2017, developments were scarce in the year that followed. However, while writing this report, the United Nations (UN) Secretary-General appointed Ms Jane Hall Lute to consult with the parties,² and the UN Security Council (UNSC) recently renewed the mandate of the United Nations Peacekeeping Force in Cyprus (UNFICYP) for an additional six months,³ following extensive diplomatic efforts by the Republic of Cyprus (RoC). Moreover, the Committee on Missing Persons (CMP) has raised considerable concerns over the diminishing results from its exhumation programme, while throughout the summer months numerous publications raised persistent questions regarding the need for truth and the need to address the violent past of Cyprus.

Among these developments, the present research was initiated, under the theme of *Societal Reconciliation* in the *Cyprus Linkages Project*, implemented by the Peace Research Institute Oslo – Cyprus (PRIO Cyprus). This specific report aims to critically examine the regional and international mechanisms and remedies available in Cyprus in relation to the missing persons of Cyprus, in the context of a broader research into the matter of missing persons globally and the developing multidisciplinary area of Transitional Justice (TJ).

In acknowledging the disappearance of just over 2,000 persons in Cyprus from 1963 to 1974, we have consolidated information on the subject, aiming to encourage a renewed public discussion on the issue and in an effort to make recommendations to policy makers so as to improve the present situation. Although the political situation in Cyprus remains very

¹ 'Enforced Disappearances', Amnesty International <https://www.amnesty.org/en/what-we-do/disappearances/>

² Apostolis Zoupaniotis, 'UN SG has asked Lute to conduct consultations with all parties on outcome of their reflections' (*Cyprus News Agency*, 3 July 2018) <http://www.cna.org.cy/WebNews-en.aspx?a=746225fe5dac4ff8b3fcb40f6dc230db>

³ United Nations, Department of Public Information, Security Council Renews Mandate of United Nations Peacekeeping Force in Cyprus, Unanimously Adopting Resolution 2430 (2018), SC/13434, 26 July 2018 <https://www.un.org/press/en/2018/sc13434.doc.htm>; Security Council, resolution 2430, S/RES/2430 (2018), 26 July 2018, available at [undocs.org/S/RES/2430\(2018\)](https://undocs.org/S/RES/2430(2018))

delicate since no political settlement has been reached, the need for new initiatives regarding the missing persons must not be disregarded. Measures need to be implemented, so as to ensure the healing of the trauma and the mitigation of any adverse effects caused by decades of delays in dealing with this matter.

It should not be overlooked that, paradoxically enough, soon after the failed referenda for the reunification of the island (Annan Plan – 2004) - in which there was also provision for the creation of a Truth and Reconciliation Commission (TRC)⁴— the role of the bi-communal Committee on Missing Persons (CMP) established in 1981 was strengthened, with the CMP resuming its work and proceeding with exhumations. In addition, the solution of problems related to human rights, such as that of the missing persons, can improve chances of an overall solution since it will increase trust in ‘the other’. Moreover, the situation of a non-solution can discourage the international community, or external factors in general, from intervening.⁵

The focus of this report is legal, and many of the terms used herein have been assigned a legal or other scientific definition. To avoid confusion, efforts have been made to offer clarifications on the terminology where necessary. In this regard, it is important to differentiate between the terms ‘missing person’ and ‘enforced disappearance’ from the outset, as the two refer to two distinct legal categories of victims of armed conflict, even though they are often applied interchangeably.

Although widely used in international humanitarian law, the term ‘missing person’ is not legally defined. A useful definition however, would be the one employed by the International Committee of the Red Cross (ICRC), according to which a ‘missing’ or ‘unaccounted’ person is someone:

whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.⁶

Evidently, this is a broad definition, going beyond the traditional use of the term in the context of a conflict or other social or political unrest.⁷

4 E. Kaymak, ‘Does Cyprus need a Truth and Reconciliation Commission?’ (2007) 19 (1) *The Cyprus Review* 71

5 For an extensive analysis see: I. Kovras, N. Loizides, ‘Delaying Truth Recovery for Missing Persons’ (2011) 17(3) *Nations and Nationalism* 520

6 ICRC Factsheet, *Advisory Service on International Humanitarian Law, Missing persons and their families*, (December 2015), available at <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>

7 I. Kovras, *Grassroots Activism and the Evolution of Transitional Justice* (Cambridge University Press, 2017) 14

On the other hand, an enforced disappeared person is a victim of the international crime of enforced disappearance, relating to 'crimes against humanity', and has been defined as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁸

In Cyprus, responsibility for the disappearances is not always clear. It is not a case of somebody 'simply' disappearing due to acts of the opposing group during hostilities.⁹ The issue remains closely associated with a series of crimes, including targeted and mass killings, which took place during the country's violent period 1963-1974. Therefore, distinguishing between the different categories of cases is not always easy or even possible, due to the causal, factual or chronological proximity of these events. Thus, the more generic term 'missing person' appears to be more appropriate in the Cypriot context.

The present research is based primarily on desk research, referring to both primary and secondary sources. Primary sources included official documents, court decisions and international, regional and domestic legal instruments, while secondary sources included books, reports by domestic, regional or international organisations, academic journal articles and media sources, as well as educational tools and other relevant material available online.

These were combined with empirical research, in the form of a series of interviews with three categories of persons: a) Relatives b) Researchers, Journalists and Civil Society members and c) Officials and representatives of relevant Authorities. With regard to the Turkish Cypriot community, we collaborated with the Turkish Cypriot Human Rights Foundation¹⁰ to facilitate our contact with key persons and authorities in the northern part of the island.

Out of a total of 26 invitations to participate in an interview, only 13 interviews eventually took place on either side of the Buffer Zone, and one official sent information in written form, with regard to specific questions only. Seven interviews were with researchers/journalists and civil society members, five with relatives of missing persons and persons that were 'known dead' and one with an official/ representative of a relevant authority. Despite our efforts to interview representatives of all available mechanisms and authorities involved on each side, this was not always possible, either because they declined the invitation, or because no reply was communicated.

To facilitate the interview process, we set up a list of open-ended questions to be used by the interviewer as a guide in the course of a discussion with each interviewee. All interviews were audio-recorded, but with anonymity protected.

⁸ International Convention for the Protection of All Persons from Enforced Disappearance 2006, Art 2

⁹ P. Sant Cassia, *Bodies of Evidence: Burial, Memory and the Recovery of Missing Persons in Cyprus* (Berghahn Books, 2007) 2

¹⁰ For more information visit: http://www.ktihv.org/index_ENG.htm

The list of written materials used and persons interviewed is by no means exhaustive. Therefore, the authors would like to emphasise that the present report is only a first step towards potential additional research in this thematic area.

Our aim was to investigate the individual and collective needs and available mechanisms relating to the matter of the missing persons in both the Greek Cypriot and Turkish Cypriot communities and to this respect assume a 'mirroring approach' for the information sought. Nevertheless, the report may come across as one-sided since the majority of the information provided relates to developments concerning the Greek Cypriot community, due to difficulties in accessing adequate information related to the Turkish Cypriot community. It also became apparent from the early stages of the research that the approach and policies of the leadership of the Turkish Cypriot community have been radically different from those of the RoC, since it appears that for years the former's position was that missing persons should be considered as 'martyrs'¹¹ and no action was undertaken.

As shown below, the issue of missing persons in Cyprus has gone through various phases in the last decades. Through our research, we have frequently observed confusion over the different mechanisms and processes adopted by the RoC and the Turkish Cypriot authorities (legally defined as 'Turkey's subordinate local administration operating in the areas under the effective overall control of Turkey'),¹² as well as the recurrence of contradictory views, opinions and rumours. Hence, through the present research we had the opportunity to investigate the extent to which these varying opinions exist among persons who are directly concerned and/or have experience with the issue of missing persons, and to inquire as to the position they hold regarding the application of TJ in Cyprus. Moreover, in the framework of our work with the non-governmental organization (NGO) Truth Now, we had the opportunity to draw information and learn from the experience of partner organisations abroad and consider improvements that would be necessary in Cyprus.

The overall objective of this research project is to holistically address the early initiatives and the present developments regarding the issue of missing persons in Cyprus. Thus, we will address the roots of the problems associated with handling this issue, the emerging historical memory and the subsequent trauma and mistrust. This process will provide us with an insight that will enable us to develop recommendations for a coherent and sustainable long-term policy aimed at finally, establishing the truth with respect to the missing persons in Cyprus.

Specifically, in Section 2 we provide a brief chronology of the issue of missing persons in Cyprus, from the immediate aftermath of the conflicts up to the latest initiatives. Then, in Section 3 we offer an overview of the various mechanisms developed by each community, noting the different approaches of the Greek Cypriot and the Turkish Cypriot communities—

¹¹ For an analysis of the symbolism of the missing persons in each community, see: Sant Cassia (n 9) 'The Martyrdom of the Missing', 94-130

¹² *Loizidou v Turkey (Preliminary Objections)* [1995] ECHR 10 (23 March 1995) [59] – [64]

largely based on their respective positions on the matter. In Section 4, we thoroughly examine the mandate and the work of the CMP, as the primary mechanism dealing with the missing persons in Cyprus, while Section 5 offers an overview of the current legal framework as well as relevant case law with regard to the missing persons in Cyprus, as a source for the exigencies pertaining in Cyprus. Section 6 provides a brief introduction to the context of TJ and focuses on particular examples of good practice from around the world developed within the said context, in an effort to draw guidance for measures that could be implemented in Cyprus. Lastly, in Section 7, we draw a list of conclusions and recommendations for the issue of missing persons in Cyprus, which as a purely humanitarian issue forms a linkage between the Greek Cypriot and Turkish Cypriot communities.

The experience of missing persons is common to both communities. In a recent gaffe in the Greek Cypriot media, on 14 August 2018, a photo taken in 1964 of a Turkish Cypriot woman mourning in despair was used with reference to the Greek Cypriots' suffering of 1974. This unintentionally revealed again that, as noted on the social media platform Twitter, the "pain looks same, whatever side you are in."

In Cyprus, the inability to mourn, the feelings of uncertainty caused by not knowing the truth, as well as the lack of any psychosocial support for the families and of any effective criminal investigations or formal apologies, have also been identified as factors adversely affecting the relatives of the missing persons regardless of the community they belong to. These have frequently led to post-traumatic stress disorder and depression. In addition, many families have felt stigmatised and, with most missing persons being men, the welfare of women – especially those with young children – was particularly adversely affected. The symbolic image of the mourning women overridden by sadness or despair while holding a picture of their missing father, husband or child remains deeply engraved in the collective memory of the whole population of the island. This very central image serves as a reminder of the highly humanitarian nature of the issue of missing persons.

There has been considerable research indicating the adverse effects on those awaiting the return of a loved one. Even though it is not always easy to frame the extensive psychosocial consequences, a number of commonalities have been observed.¹³ A common effect is that the natural grieving process of losing someone is disturbed.¹⁴ In addition, families are often called to face additional economic, legal and social problems, including social exclusion and the lack of support usually offered in the cases of certain death.¹⁵ This becomes even more burdensome in societies dominated by organised violence and serious mistrust – such

¹³ M. Blaauw, V. Lähtenmäki, "Denial and silence' or 'acknowledgement and disclosure" (2002) 84 *International Review of the Red Cross* 767, 768

¹⁴ *ibid* 769

¹⁵ *Ibid*

as the Cypriot society in the period concerned – where silence and fear have been ever present.¹⁶ On the basis of the relevant research, it is also noted that the phenomenon of disappearances in a conflict is not only a Cypriot linkage, but also a global one, and as such we will draw guidance from good practices from around the world.

According to the rationale of the *Cyprus Linkages Project*, we here investigate whether there are issues that all sides to the conflict need to address together, regardless of any political developments or lack thereof. There is no doubt that the issue of missing persons is one of these, being first and foremost a humanitarian issue and a continuous open wound in our society. Having this in mind, we aspire in the present research to (re)open a much-needed and inclusive public dialogue, which will eventually lead to clear and effective measures in dealing with the past in Cyprus.

In closing, the authors would like to emphasise that the present report is only the first step towards a more comprehensive approach — one that could give more definitive recommendations on how to deal with the past in Cyprus in general, and the issue of the missing persons in particular.

¹⁶ Ibid 768; Cypriot journalist Sevgül Uludağ refers in her writings to a 'zone of silence'. See S. Uludağ, *Oysters with the missing pearls* (IKME, BILBAN, 2006) 23-26

A CHRONOLOGY OF THE MISSING PERSONS IN CYPRUS

Just over 2,000 persons went missing in Cyprus in the period 1963-1974, during clashes between the Turkish Cypriot community and the Greek Cypriot community. Among these were Turkish Cypriots, Greek Cypriots, non-Cypriots residing in Cyprus, including UN personnel, and Greek and Turkish soldiers.

The independent RoC was established in 1960, as a result of three multilateral treaties between Cyprus, Greece, Turkey and the United Kingdom (as guarantor powers), following decades-long rivalries between the Greek-speaking and Turkish-speaking inhabitants of the island, who nationally associated themselves with the respective neighbouring states. Due to these rivalries, the state faced a constitutional crisis as early as 1963.¹⁷ With growing mistrust between the two power-sharing communities, armed violence broke out in December 1963, reaching a peak in 1964.¹⁸ Another extensive wave of violence recurred in 1967. In the meantime, the population was congregated in different areas of the island, living in fear of a persisting threat of violence and retaliation that affected all aspects of daily life.¹⁹ A significant number of people were displaced, declared missing or lost their lives.

Against this backdrop and political rivalries within each community, Turkey launched an aggressive military operation on the island on 20 July 1974, following a *coup d'état* against President Makarios, which took place on 15 July 1974 with the backing of the Greek junta. While the events of the 1960s had a significantly heavier impact on the Turkish Cypriot community, the events of summer 1974 escalated into a full-scale international armed conflict, affecting the Greek Cypriot community more heavily. Thus, the issue of the missing persons in Cyprus has always been embedded in devastating feelings of mistrust, fear, anger and bitterness evolving over an extensive period of time.

¹⁷ D.W. Markides, *Cyprus 1957-1963: From Colonial Conflict to Constitutional Crisis, The Key Role of the Municipal Issue* (University of Minnesota, 2001).

¹⁸ J. Ker-Lindsay, *Britain and the Cyprus Crisis, 1963-1964* (Bibliopolis, 2004)

¹⁹ For an overview of the general situation on the island in the 1960s see: United Nations, Security Council, Report of the United Nations Mediator on Cyprus to the Secretary-General, S/6253 (26 March 1965) available from <http://undocs.org/S/6253>.

From 1963 onwards each community developed its own separate narrative, expressing its own separate stories—leading to a mental division in addition to the physical barriers dividing the island. The issue of the missing persons was not immune to this mental division.²⁰

The differentiation in formal positions came to affect various aspects of the issue of missing persons. From the very early days following the ceasefire in 1974, the RoC maintained the position that a significant number of missing persons were detained in Turkey and this perception led to rumours, media stories, political statements and diplomatic efforts well into the 1990s.²¹ In contrast, the Turkish Cypriot leadership, from the very beginning, held the position that there were no missing persons and that their relatives should accept them as dead—they were martyrs and heroes of the war. The issue of the missing persons was quickly promoted on the agenda of the negotiation process by the Greek Cypriot side, while the Turkish Cypriot side resisted discussing the matter. As a result, a Sub-Committee on Humanitarian Matters was set up, separate from the formal negotiation process, following the events of summer 1974.²² Its first session was held in January 1975, but quickly proved inefficient since it was also dealing with a number of property-related issues.²³ As a result, a separate ad-hoc committee was set up to deal exclusively with the issue of missing persons.²⁴ Its progress was negligible, but at its last meeting in June 1975 the ICRC formally gave to each side the very first catalogues of the Greek Cypriot and the Turkish Cypriot missing persons: 2,192 and 103, respectively.²⁵

In December 1975, the UN General Assembly (UNGA) passed Resolution 3450(XXX)²⁶ on the Missing Persons in Cyprus, which explicitly requested the UN Secretary-General to 'exert every effort, in close co-operation with the ICRC, to assist in tracing and accounting persons missing as a result of armed conflict in Cyprus.'²⁷ This then paved the way for the establishment of the CMP in 1981,²⁸ which, as analysed below, remained inactive until 2004.

As early as 1974, the Law on Aid to Martyrs and Family Victims of War Incidents and Disabled was passed by the Turkish Cypriot authorities, reflecting their formal position.²⁹

²⁰ For a detailed account on how civil society dealt with the issue after 1974 see: Association for Historical Dialogue and Research (AHDR), *Thinking Historically about Missing Persons: A guide for teachers – 4. Missing Persons in Cyprus* (Nicosia, 2011)

²¹ N. Sergides, *Φάκελος «Αγνοούμενοι της Κύπρου»* (File 'The Missing Persons of Cyprus') (Nicosia, 2016) 21-63; For a critical review see: M. Drousiotis, *1619 Ενοχές – Σειρά Αρχείο* (1619 Guilts – Archeio Series) (Diafanía Publishing, 2000) 87-107 (both books in Greek)

²² Sergides (n 21) 258

²³ *ibid* 264

²⁴ *ibid*

²⁵ *ibid* 265

²⁶ General Assembly resolution 3450 (XXX), Missing Persons in Cyprus, A/RES/3450(XXX) (9 December 1975) available from [https://undocs.org/A/RES/3450\(XXX\)](https://undocs.org/A/RES/3450(XXX))

²⁷ *ibid*

²⁸ For a detailed chronology on the negotiations see: Sergides (n 21) 319-343

²⁹ Şehit ve Hadise Kurbanı Ailelere ve Malûllere Yardım Yasası (Law No 7/1974)

According to this, only members of the Turkish Armed Forces, persons who died in battle (including civilians) and missing persons who disappeared as a result of enemy actions, fall within the scope of its application.³⁰ Moreover, an additional law was passed in 1985, dealing with the donation of land to the children of martyrs and war victims,³¹ with the same criteria applying to entitlement as the criteria defining the beneficiaries under the previous law.

Moreover, the Association of Martyrs' Families and War Veterans was established—an organisation we were unable to establish communication with or receive any additional information about, in the context of the present research. Additionally, and albeit not strictly a relatives' organisation, the Turkish Cypriot Human Rights Foundation was established in 2005, which has since undertaken efforts to address the matter from a human rights-based approach.

Despite the clear position of the Turkish Cypriot authorities from the very beginning, this was not reflected in the reactions of the members of the Turkish Cypriot community. Turkish Cypriot journalist Sevgül Uludağ, active on both sides of the island and the first to set up an informal hotline in search of concrete information on missing persons, wrote how hopes remained high that the missing would one day return.³² Moreover, CMP geneticist, Gülbanu Zorba, mentions how many families believed that their loved ones were alive on the other side of the buffer zone, and how they had renewed hopes for their return after the opening of the first checkpoint in 2003.³³

It is probably because of this core policy that the Turkish Cypriot community has not experienced the same scandalous controversies experienced by the Greek Cypriot community. Nor has it developed a corresponding network of mechanisms dealing with the missing persons of their community, as we will see below. Indeed, the work of the CMP is considered by some the only serious effort on behalf of the Turkish Cypriot side.³⁴

On the other hand, it was not until 1979 that the RoC Parliament first legislated on the matter, with the Law on Missing Persons (Temporary Provisions) of 1979,³⁵ which primarily provides for the administration of the missing persons' property by their family. According to this law, 'missing person' is defined as a Greek Cypriot, "missing because of the Turkish invasion since 20th July, 1974 and any consequence thereof, for whom the Government of the Republic has not received any positive information of him being dead".³⁶ Other relevant

30 O. Polili, 'Human Rights concerning Missing Persons and their families in north Cyprus' (Translation by Enver Erkan) 65

31 Şehit ve Hadise Kurbanı Çocuklarına Arsa Verilmesini Düzenleyen Yasa (Law No 21/1985)

32 Uludağ (n 16) 32

33 N Danziger, R MacLean, *Beneath the Carob Trees* (Armida, Galeri Kultur Publishing, Committee on Missing Persons in Cyprus, 2016) 162

34 Polili (n 30) 64

35 Ο περί Αγνοουμένων (Προσωρινά Διατάξεις) Νόμος του 1979 (Law No 77/1979)

36 *ibid.*, s. 2

laws deal with the retirement benefits of missing civil servants,³⁷ the professional rehabilitation of disabled persons and dependents of those lost in battle, the missing, the disabled and the enclaved,³⁸ the direct supervision by the President of the Republic on issues relevant to the missing persons, the enclaved and those who suffered,³⁹ the regulation of pension benefits for the missing civil servants and employees of public organisations⁴⁰ and the regulation of some other property issues.⁴¹

The relatives of the missing Greek Cypriots have organized themselves in a number of associations. The main organisation is the Pancyprian Organisation of Relatives of Undeclared Prisoners and Missing Persons, which represents relatives of missing persons as per the legal definition mentioned above.⁴² In addition, there is also the association of the relatives of the missing persons from the village of Ashia and the Committee of Relatives of Missing Persons of the period 1963-1964, who, as seen above, are not provided for in the Law of 1979. In addition, a number of associations of the diaspora have been active around the world,⁴³ while there is also a Panhellenic Committee of Parents and Relatives of Missing Persons, representing the families of Greek soldiers who went missing during the events of summer 1974.

The relationship of these organisations amongst themselves, with the government of RoC, with certain sub-groups of relatives, and/ or with the established governmental mechanisms has not always been harmonious. In the mid-1990s, for a brief period the Greek Cypriot relatives were in fact divided into two organisations.⁴⁴ At present, not all relatives feel that these formal organisations fully represent their needs. This tense climate is reflected throughout the developments that took place in the two decades following 1974, which included power-struggles and disagreements at the expense of the relatives. The issue of setting up the catalogue of missing persons is one example of such points of disagreement.

In relation to the matter of the catalogue of missing persons, the first was prepared by the ICRC and contained 2,228 names,⁴⁵ while a 1983 UN Report of the Working Group on Enforced

³⁷ Ο περί Ωφελημάτων Αφυπηρητήσεων Αγνοουμένων Κρατικών Υπαλλήλων (Ειδικά Διατάξεις) Νόμος του 1980 (Law No 34/1980)

³⁸ Ο περί Επαγγελματικής Αποκατάστασης των Αναπήρων και των Εξαρτωμένων των Πεσότων, Αγνοουμένων, Αναπήρων και Εγκλωβισμένων Νόμος του 1992 (Law No 53(I)/1992)

³⁹ Ο περί Άμεσης Εποπτείας από τον Πρόεδρο της Δημοκρατίας των Θεμάτων των Αγνοουμένων, Εγκλωβισμένων και Παθόντων (Προσωρινές Διατάξεις) Νόμος του 1993 (Law No 17(I)/1993)

⁴⁰ Ο περί Ρυθμίσεως των Συνταξιοδοτικών Ωφελημάτων των Αγνοουμένων Κρατικών Υπαλλήλων και Υπαλλήλων των Οργανισμών Δημόσιου Δικαίου Νόμος του 1998 (Law No 24(I)/1998)

⁴¹ Ο περί Ρυθμίσεων Ορισμένων Θεμάτων σε σχέση με τις Περιουσίες των Αγνοουμένων Νόμος του 2003 (Law No 178(I)/2003)

⁴² On the homepage of the website of the organisation, there is no reference to missing persons before the 1974 Turkish invasion: <http://www.missing-cy.org/home.html>

⁴³ E.g. Organisation of Relatives of Cypriot Missing Persons (United Kingdom), Global Federation of Relatives of Undeclared Prisoners and Missing Persons of Cyprus

⁴⁴ Sergides (n 21) 214-224; For a critical review see Drousiotis (n 21) 61-63

⁴⁵ Sergides (n 21) 73

Disappearance declared the number of missing persons from both communities to be 2,400 persons.⁴⁶ We assume that these numbers referred to missing persons from both communities and only from the summer of 1974, since usually such valuable detailed information is lacking in most available sources. Yet, such information is important for accurate historical recording of the facts and can only be clarified by formal documentation of relevant governments or organisations, which is not easily accessible to researchers.

The ICRC catalogue was later double-checked and edited by the newly established Missing People Department (Υπηρεσία Αγνοουμένων), which reduced the number to 1619 individuals, reflecting only the Greek Cypriot missing persons; a symbolic number within the consciousness of the Greek Cypriot community even today.⁴⁷

Following other fluctuations in numbers, a new formal catalogue containing the names of 1,493 missing persons, primarily Greek Cypriots, as well as about 55 Greek soldiers,⁴⁸ was published in May 2000,⁴⁹ almost 26 years after the summer of 1974. All persons on the list went missing in 1974.⁵⁰ There is no reference to those who went missing earlier, or to other non-Cypriot citizens, with the exception of a few Greek citizens (not soldiers) who were permanent residents in Cyprus. A separate catalogue of missing Turkish Cypriots was published in the Official Gazette of the RoC in 2003.⁵¹ For the preparation of the missing persons catalogue, as well as, among other things, the lack of transparency and the politicization of the issue, the RoC has been strongly criticized.

In the 1990s many women attended demonstrations during visits of foreign delegations, or on the occasion of important anniversaries. One of our interviewees repeatedly referred to the detrimental psychological effects these events had on his mother for weeks thereafter. In his words, politicians were oblivious to her suffering. Another referred to how the traditional position of women in Cypriot society had prevented women from taking immediate action in claiming their rights. This position is, however, challenged by Hadjipavlou, who points out that women were not mere 'passive onlookers', referring to activities, protests and, at a later stage, bicomunal women's groups who addressed the issue of gender in the context of the Cypriot conflict.⁵² Indeed, women's participation in such events, albeit detrimental to them, were one of the few expressions of the otherwise silent suffering of the women of Cyprus.

⁴⁶ United Nations, Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1983/14 (21 January 1983), available from <https://undocs.org/E/CN.4/1983/14> para 43

⁴⁷ Sergides (n 21) 73-74

⁴⁸ Republic of Cyprus, *Official Gazette - Issue 3418* (10 July 2000)

⁴⁹ Republic of Cyprus, Council of Ministers, *Decision No 12/2000* (4 May 2000)

⁵⁰ Official Gazette (n 48)

⁵¹ Republic of Cyprus, Ministry of Foreign Affairs, *Missing Persons*, available at: http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa10_en/mfa10_en?OpenDocument

⁵² M. Hadjipavlou, *Women and Change in Cyprus: Feminisms and Gender in Conflict*, (I.B Tauris, 2010) 76

Within this environment, 2006 saw the establishment of the grassroots initiative, 'Bicommunal Initiative of Relatives of Missing Persons, Victims of Massacres and other Victims of 1963-74 Events - Together We Can'. This initiative is unique in its effort to challenge the mainstream narratives on both sides of the divide. Their aim is to promote empathy and understanding through meetings, gatherings and talks delivered by victims, witnesses and relatives of missing persons from both communities, in villages, towns and schools all over the island.⁵³ They essentially see the issue of the missing persons as a linkage, as opposed to yet another dividing factor.

With few exceptions, the lack of an active, non-politicised civil society in Cyprus, the lack of awareness on matters relevant to the context of the missing persons and the decades-long domination of fear and silence, even after the end of the hostilities, are all factors that have disempowered the local population of the island. This experience is common to most relatives of missing persons in Cyprus, regardless of the impression that the issue is closely associated with political developments. In the course of the interviews, it was continually reiterated that politics should not matter. The priority for every relative is to find out what really happened to their loved one. Finding their remains, burying them according to their respective traditions and finding the truth leads to the natural cycle of grieving, as well as, most importantly, to closure. These basic needs define the issue of missing persons as a linkage.

⁵³ Ch. Efthymiou, 'Reflections on bi-communal relations in Cyprus' (*Open Democracy*, 5 August 2014) available at: <https://www.opendemocracy.net/can-europe-make-it/christos-efthymiou/reflections-on-bicommunal-relations-in-cyprus>

INDIVIDUAL MECHANISMS AND REMEDIES

In the above section we briefly provided a chronology of the issue of missing persons and how the two communities have had two opposing starting points with regard to their formal policies. We also referred to the universal psycho-social elements which affect the communities. Before proceeding to an examination of potential ways forward, we begin here with an overview and assessment of the mechanisms available in Cyprus today. The CMP, as the principal mechanism on the matter of the missing persons in Cyprus, will be discussed separately in the following section.

Shortly after the 1974 war, the RoC took steps to establish procedures to ascertain the fate of the missing persons. To this end, the RoC created specific services and relevant responsible bodies, all within the state mechanism. There were not always analogous mechanisms functioning in the northern part of the island, under the direction of the Turkish Cypriot leadership.⁵⁴ This is not surprising against the background of their long-term policy that all missing persons had lost their life and their return should not be anticipated.

The interviews we conducted were useful in clarifying the role of the said services and how their work has contributed to the search efforts and the requests of the families of the missing persons. In addition, the interviews served as an initial step in our effort to evaluate the satisfaction of the relatives regarding the services. Though opinions differ, there were a number of trends observed.

Missing People Department & the Commissioner to the Presidency (on Humanitarian Affairs) of the Republic of Cyprus

The **Missing People Department** (Υπηρεσία Αγνοουμένων)⁵⁵ was established in November 1977, taking over the responsibilities of the former Department of Humanitarian Affairs. Initially it fell under the direct supervision of the Office of the President of the Republic. Then it was briefly moved to the, eventually unconstitutional, Presidency Ministry, and the Ministry of Justice, before returning back to the Office of the President of the Republic in 1993. Today, the Department falls under the supervision of the Commissioner to the Presidency, also referred to as the Commissioner for Humanitarian Affairs.⁵⁶

⁵⁴ Polili (n 30) 64

⁵⁵ Republic of Cyprus, Missing People Department (in Greek), available at: http://www.commissionertothepresidency.gov.cy/anthropos/anthropos.nsf/page65_gr/page65_gr?OpenDocument

⁵⁶ Republic of Cyprus, Presidential Commissioner, *Commissioner*, available at: http://www.commissionertothepresidency.gov.cy/anthropos/anthropos.nsf/page01_en/page01_en?OpenDocument

The main objective of the Missing People Department is to 'establish the fate of every single one of the missing persons, whose tracks were lost during the Turkish invasion of 1974 and the intercommunal disturbances of the period 1963-1964'.⁵⁷ The Department summarizes its responsibilities as the collection, study and update of all information in the individual files of the missing persons; the preparation of relevant reports on the circumstances of the disappearance of every missing person; the collaboration with existing organisations of missing persons in Cyprus and abroad; the promotion and the resolution of the different socio-economic problems faced by the family of the missing persons (thus, they also deal with issues pertaining to the property of the missing persons);⁵⁸ and lastly, the collection of genetic material from relatives, for the purposes of identification.⁵⁹ It is notable that there is no distinction between the Greek Cypriot and the Turkish Cypriot missing persons and thus all missing persons of Cyprus from both communities fall under the mandate and responsibility of the said Department.

The **Commissioner to the Presidency** is an official appointed by the President of the Republic and, according to the website of his office, he deals with a variety of humanitarian issues which, apart from the missing persons, include the Enclaved Department that is concerned with the Enclaved Greek Cypriots who stayed in the northern part of the island, and issues relevant to the three religious groups recognised under the Cypriot Constitution (the Maronites, the Armenians and the Latins), as well as issues relevant to the (Greek) Cypriot Diaspora.

When in 1993 President Clerides requested that the Missing People Department should fall under his direct supervision, through the office of the Commissioner, he aimed at having personal responsibility for the matter. A side effect of this decision however, is the fact that all decisions regarding the missing persons are considered 'acts of government', and as such cannot be challenged under the jurisdiction of the Administrative Court, raising serious concerns with regard to the relatives' access to justice. This concern will be revisited below.

Generally, the list of tasks assigned to the Missing People Department is comprehensive. Nevertheless, it appears that access to information and the said services has been problematic for years, either for not being adequately accessible or for the information being incomplete. The latter might also be the consequence of the fact that different departments of the RoC have files for the missing. In relation to this, it is noted that recently the RoC under-

⁵⁷ Republic of Cyprus, Missing People Department, *Historical Background* (translation by the authors) available at: <http://www.commissionertothe presidency.gov.cy/anthropos/anthropos.nsf/All/A9760610FE9746C5C2257F65003484F0?OpenDocument>

⁵⁸ Republic of Cyprus, Missing People Department, *Missing persons' property administration* (translation by the authors) available at: <http://www.commissionertothe presidency.gov.cy/anthropos/anthropos.nsf/All/D7EBCED077DAC0F2C2257F6500348BA6B?OpenDocument>

⁵⁹ Republic of Cyprus, Missing People Department, *Responsibilities* (translation by the authors) available at: <http://www.commissionertothe presidency.gov.cy/anthropos/anthropos.nsf/All/68681B3251273D00C2257F650034A311?OpenDocument>

took the initiative to proceed with the digitization of the files and the information kept in the different departments, creating a centralized database. Nevertheless, the lack of transparency in the work of the Department raises serious concerns regarding its efficiency and credibility.

On the other hand, it has to be noted that positive comments have been received for the assistance offered by the current Office of the Commissioner to the Presidency. According to our understanding the said Office receives information and complaints in relation to missing persons from both communities, since both are considered to fall under its authority and mandate.

Given the fact that it is the Office of the Commissioner that supervises the Missing People Department, it is puzzling to observe contradictory opinions concerning the work of the two bodies. At the same time, it is also important to note that not everyone is aware of the exact responsibilities of the said mechanisms, a matter which relates to the limited level of awareness and accessibility to them.

Furthermore, according to a recent announcement by the Office of the Commissioner, in the context of a policy of full transparency and truth, the families of the missing persons will be given, at their request, a detailed forensic report, further to an agreement signed with the National and Kapodistrian University of Athens. It is however noted that, as announced, this concerns Greek-Cypriots and Greek nationals.⁶⁰

No similar bodies have been identified on the other side of the divide.

Parliamentary Committee on Refugees, Enclaved, Missing and Adversely Affected Persons

In addition to the work of the Commissioner and the Missing People Department, which are part of the executive power of the State, we wish to note that the RoC's House of Representatives (Parliament), which is the legislative body, in addition to passing the relevant legislation described above, has also established a Parliamentary Committee on Refugees, Enclaved, Missing and Adversely Affected Persons, tasked with issues relevant to the above-mentioned groups of people.⁶¹ It must also be noted that given the circumstances of political unrest in Cyprus and the application of the doctrine of necessity, the acting Parliament of the RoC, in its above-mentioned activities, is mainly concerned with the Greek Cypriot community.

In 2016 the Committee, on its own initiative, made an extensive effort regarding the missing persons, dealing with issues such as the provision of assistance for the burial of those identified, the issuance of Death Certificates for those identified, assisting with problems in the identification of the group of missing persons from the village of Ashia and handling incidents of discrimination regarding the support given to the families of missing persons.

⁶⁰ Cyprus News Agency, 'Missing persons families will be given, at their request, forensic report relating to their next of kin' (Nicosia, 24 September 2018) available at: <http://www.cna.org.cy/WebNews-en.aspx?a=72fd7834ee12400ea9d7d0c9b1522f3d>

⁶¹ Detailed information on its ongoing work is available at: www.parliament.cy/el/parliamentary-committees-/κοινοβουλευτική-επιτροπή-προσφύγων-εγκλωβισμένων-αγνωσμένων-παθόντων (in Greek)

Further to its efforts, in 2010, the Parliament established the 29th of October as the day for observing the memory of the Missing Persons of Cyprus. Despite its name, which rightfully includes the missing persons from both communities, the media coverage is mainly concerned with the Greek Cypriot missing persons of 1974, frequently accompanied by the symbolic number '1619'.

As a parenthesis, it is important to point out the role of the media, on both sides, which has failed so far to address the matter of the missing persons in Cyprus holistically and indiscriminately. They tend to refer only to the suffering of the families of their own community. For instance, even today, media each side will only cover the funerals of the identified missing persons who belong to their own community. This is also often the position of the officials, who only attend the funerals of identified missing persons of their community. According to our understanding this also applies to the Members of the CMP.

However, it is important to note that the role of the media, in recent years, has also been 'pivotal to overcome the fear of speaking about "inconvenient truths" that could re-open old wounds.'⁶² Investigative journalists and researchers have published stories about the missing persons, which has prompted more people to speak out after many years of silence.

No similar Parliamentary Committee has been identified in the areas not under the effective control of the RoC.

At this point it is relevant to refer to the involvement of the Parliament of the European Union (EU). With Cyprus being a member of the EU since 2004, the vast majority of Cypriot missing persons and their relatives are EU citizens.

The relevant Parliamentary Committee is the committee on Civil Liberties, Justice and Home Affairs (LIBE). A delegation of LIBE visited the island in April 2018 and a draft report has already been discussed in Brussels. The report includes a call to the RoC and Turkey to increase their efforts and provide further information, as well as a call to Greece and the UN to provide any relevant information in their archives. This relates to the fact that to a certain extent all the parties involved failed to fully comply with their respective rights.

It is interesting to note that a number of complaints were made by the Greek Cypriot community, alleging that the EU Parliament has equated 'the perpetrator with the victim'. Additionally, as a result of a previous resolution by LIBE (February 2015) on the 'Mass graves of the missing persons of Ashia in Ornithi village in the occupied part of Cyprus', there were reactions by the Turkish Cypriot community, and specifically the Association of Martyrs' Families and War Veterans, who claimed that the Resolution was unilateral and proved that the case of the Turkish Cypriot missing persons is not examined on an equal basis with the Greek Cypriot missing persons at the European level.

The above incidents reveal that the existing European involvement is not free of mistrust and critique by both communities, given the fact that inevitably politics are at the core of the bodies involved.

⁶² I. Kovras, 'Unearthing the Truth: The Politics of Exhumations in Cyprus and Spain' (2008) 19 (4) *History and Anthropology* 371, 385

Ministry of Foreign Affairs of the Republic of Cyprus

The Ministry responsible for the missing persons in the RoC is the Ministry of Foreign Affairs (MFA). It is safe to assume that this is due to its direct relevance with the 'Cyprus Problem'. As such, the MFA has been always responsible for the diplomatic relations relating to the matter, and also for the international treaties in this respect.

One of its responsibilities includes the ratification of the UN Convention for the protection of All Persons from Enforced Disappearance (CED), which was signed by the RoC in 2007 but has not yet been ratified, for reasons which the MFA has not so far given any adequate reply. It is relevant to note that Turkey has not even signed the said Convention. Moreover, the MFA participates in the Committee of Ministers (CoM) of the Council of Europe (CoE) in Strasbourg, in relation to, among other things, the execution of the judgments and the adoption of individual and/or general measures related to cases relevant to the missing persons there.

In the context of its responsibilities, the MFA has requested from Turkey the disclosure of the total number of Greek Cypriot prisoners of war who were transported to Turkey, including information on those included on the ICRC documents but whose fate has not been accounted for to date; military reports and records held by the Turkish army containing information from the 'clearing of battlefields'; and information concerning prisoners of war who were detained in Turkish mainland prisons.⁶³

Such demands are not considered unreasonable and are in fact supported by the European Court of Human Rights (ECtHR) through its case law, namely the fourth interstate case of *Cyprus v. Turkey*⁶⁴ and *Varnava and others v. Turkey*.⁶⁵ Moreover, the Turkish Cypriot Human Rights Foundation has also raised the same issue, pointing out that Turkey's responsibility for the missing persons in Cyprus was recognised by the Committee against Torture, the UN monitoring body of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, during its 45th Session held in November 2010.⁶⁶ Additionally, until very recently the Turkish military did not allow exhumations in military zones under its effective control; in May 2010, the UN Secretary-General reported for the first time on exhumations in military controlled areas in the north.⁶⁷ Recently, Turkey has allowed certain excavations in military zones, but it has been reported that this is not systematic and that the permission granted each time is accompanied by restrictions and difficulties, which hinder the work of the CMP.

⁶³ Republic of Cyprus, Ministry of Foreign Affairs (n 51)

⁶⁴ *Cyprus v Turkey* (Application No 25781/94)

⁶⁵ *Varnava and others v Turkey*, Application Nos 16064/90 -16066/90, 16068/90 – 16073/90 (ECtHR Grand Chamber Judgment, 18.9.2009)

⁶⁶ Polii (n 30) 72; United Nations, Committee against Torture, Considerations of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture, CAT/C/TUR/CO/3 (20 January 2011) available from <https://undocs.org/CAT/C/TUR/CO/3>

⁶⁷ United Nations, Security Council, Report of the Secretary-General on the United Nations operation in Cyprus, S/2010/264 (28 May 2010) available from <https://undocs.org/S/2010/264>

The policy of the RoC to focus on the responsibility of Turkey, however, failed for years to adequately address the responsibilities of the RoC. In recent years, these have come to the surface through a series of judgments by domestic and international courts. In parallel, the Turkish Cypriot Human Rights Foundation also attributes responsibility to the Turkish Cypriot authorities, even going a step further to explicitly state that the current political system and the nature of the ongoing relations among the states involved allows them to disavow the 'intention to fulfil this responsibility'.⁶⁸

At this point, it is interesting to note a recent development at the CoE, where the Committee on Legal Affairs and Human Rights of the CoE Parliamentary Assembly (PACE) published a report on the 'Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies',⁶⁹ in which the Committee:

...deplores all instances of failures by States to co-operate with international human rights monitoring mechanisms and insists that any member State concerned should engage in full, unconditional co-operation without delay.⁷⁰

The document makes an explicit reference to the 'northern part of Cyprus', as well as other regions under the jurisdiction of the CoE with similar status, such as Crimea, Abkhazia, South Ossetia and Kosovo, among others.⁷¹ Resolution 2240(2018) was adopted on 10 October 2018,⁷² yet it remains to be seen how this development may affect the issue of the missing persons in Cyprus, which by default is closely related to Human Rights.

It is worth noting that in recent years the RoC undertook a number of initiatives and applied certain programmes and measures, including exhumations in burial sites under its effective control and measures to support the Turkish Cypriot community, which are steps in the right direction.⁷³ It appears that the RoC has, since 1999, been taking individual measures and initiatives to support the work of CMP, overturning the pattern of delays and gradually complying with its obligations.

Additionally, it is relevant to mention that Greece, which has ratified the CED, in the summer of 2017 handed over to the RoC a series of relevant files and archives, known as the 'Cyprus File' (Ο Φάκελος της Κύπρου). In October 2018 the first four volumes were made

⁶⁸ Polili (n 30) 83

⁶⁹ Council of Europe, PACE Committee on Legal Affairs and Human Rights, *Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies*, Doc. 14619, 18 September 2018. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25045&lang=en>

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² Council of Europe, PACE, Resolution 2240 (2018) on *Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies* (10 October 2018) available from <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25168&lang=2>

⁷³ Republic of Cyprus, Ministry of Foreign Affairs (n 51)

available to the public through the website of the Hellenic Parliament,⁷⁴ with its importance for the restoration of historic memory being recognised by the Hellenic Parliament.⁷⁵

We also note that the Cyprus Parliament produced a relevant publication in April 2011.⁷⁶ This publication drew considerable media attention, yet limited, if any, historical analysis has been made with regard to its findings to date.

We were unable to find relevant information from the Turkish Cypriot authorities.

The Law Office of the Republic of Cyprus

The Law Office of the Republic is an independent authority, not subject to any Ministry, and according to the Constitution of the RoC is headed by a Greek Cypriot Attorney General and a Turkish Cypriot Assistant Attorney General. Today both these positions are held by Greek Cypriots, while the Turkish Cypriot authorities have a separate, *de facto*, Attorney General.

The Attorney General has the power, exercisable at his discretion in the public interest, to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic. Thus, criminal prosecutions/proceedings are subject to the power of the Attorney General.

The Law Office of the Republic also acts as Counsel for the RoC in cases concerning the missing persons before domestic courts, as well as those before the ECtHR.

In addition, it is our understanding that the Law Office of the RoC was also involved in the review of the files of the missing, kept with the Missing People Department, when it was decided which files were to be given to the CMP and in the process of the finalisation of the catalogue of the missing persons.

Within the scope of the discretionary powers given to the Attorney General, and in an effort to encourage members of the public to give information to the CMP in its early years, in 1990 the Attorney Generals on each side, informed the CMP by letter that they would not prosecute any witness on the strength of any disclosure to the CMP. These decisions appear to have been taken after examining a relevant request by the CMP in relation to the difficulties the CMP was facing due to the alleged reluctance of witnesses to give information.

⁷⁴ Hellenic Republic, Hellenic Parliament, *Φάκελος Κύπρου* (in Greek) available at: <https://library.parliament.gr/%CE%A3%CF%85%CE%BB%CE%BB%CE%BF%CE%B3%CE%AD%CF%82/%CE%91%CF%81%CF%87%CE%B5%CE%AF%CE%B1/%CE%A6%CE%AC%CE%BA%CE%B5%CE%BB%CE%BF%CF%82-%CE%9A%CF%8D%CF%80%CF%81%CE%BF%CF%85>

⁷⁵ Lizzy Ioannidou, 'First 'Cyprus File' volumes presented to Greek Officials (Update 2)' (*Cyprus Mail*, 24 October 2018) available at: <https://cyprus-mail.com/2018/10/24/first-cyprus-file-volumes-presented-to-officials-ahead-of-publication/>

⁷⁶ Republic of Cyprus, House of Representatives, *Πόρισμα για το Φάκελο της Κύπρου* (17 March 2011) (in Greek) <http://www.parliament.cy/el/%CE%B5%CE%BA%CE%B4%CF%8C%CF%83%CE%B5%CE%B9%CF%82/%CF%80%CF%8C%CF%81%CE%B9%CF%83%CE%BC%CE%B1-%CE%B3%CE%B9%CE%B1-%CF%84%CE%BF-%CF%86%CE%AC%CE%BA%CE%B5%CE%BB%CE%BF-%CF%84%CE%B7%CF%82-%CE%BA%CF%8D%CF%80%CF%81%CE%BF%CF%85>

It appears that on the basis of the above-mentioned letters, the respective Attorney Generals granted a *de facto* amnesty to perpetrators that would give evidence to the CMP in the course of its investigations, with regard to such evidence and disclosures that could constitute the basis of a criminal prosecution against them. The legality of the said amnesty is questionable. This is also because it has not been legally codified, and also since it can hardly be considered compatible with the standards of an effective investigation and an effective remedy.

The said *de facto* amnesty has never been challenged in Court and it appears that very few people are aware of it. Interestingly, Amnesty International in its 1996 proposal to the UN regarding the missing persons in Cyprus, reported that there is no agreement among the parties permitting the CMP to grant immunity for witness testimony, and with no reference to the decision of the Attorney Generals not to prosecute.⁷⁷

It must be noted that it remains unclear whether and how the above-mentioned amnesty has been applied in practice, despite our efforts to acquire relevant official information. In fact, unofficial information, as well as information that has been published in newspapers, suggests that the majority of the witnesses who have provided evidence to CMP, directly or indirectly, are not perpetrators. Nevertheless, it appears that there is an abundance of evidence that could potentially lead to criminal prosecutions, even though there is no adequate information as to the exercise of the power of the Attorney Generals in this respect all these years. A reason for this might be the lack of a relevant Archive at the Office of the Attorney General. It is also confirmed that in recent years the Office of the Attorney General has not proceeded with any criminal prosecutions due to an alleged lack of adequate evidence, irrespective of the above-mentioned decision for *de facto* amnesty.

Additionally there is no available information as to whether this amnesty has proven effective for the purposes for which it was decided in 1990, namely to encourage witnesses to give information to the CMP.

In the course of the interviews it was ascertained that the CMP keeps no formal record of the testimonies received and thus there has been no need to directly invoke the amnesty granted by the Attorney Generals. Indeed, according to information given to the media by CMP employees, it has been the case that during excavations members of the public simply approached the CMP crew and indicated a specific point they should dig, sometimes without even uttering a word.

In our effort to understand the position of the society towards the said *de facto* amnesty we noted that there is no adequate knowledge in relation to the matter. However, people are willing to consider a potential amnesty, if it is proved to be an effective method to collect information for the pressing need to find the missing persons. What they are not willing to

⁷⁷ Amnesty International, *Cyprus: Proposal to the United Nations to Establish an effective commission of inquiry to investigate "disappearances, "missing" persons and deliberate and arbitrary killings in Cyprus* (31 July 1996) Index number: EUR 17/001/1996 available at <https://www.amnesty.org/en/documents/eur17/001/1996/en/>

accept is a blanket amnesty that would apply to everyone, especially regarding persons who have shown no remorse for their actions. It appears that there is a call from the society to the political leaders to move away from the policy of “forgetting” the past, frequently related to “blanket amnesties”, favouring instead a policy of “remembering” the past usually accompanied by policies of accountability and acknowledgment.⁷⁸

Furthermore, any information we have in relation to any investigation undertaken by the Law Office of the RoC is through the case law of the ECtHR. More details will be provided below in the analysis relating to ECtHR case law. It is relevant, however, to note here that when the remains of a missing person are identified, the obligation of the competent authorities to proceed with the investigation of the circumstances of death is re-engaged.

According to Turkey’s submissions before the CoM of the CoE, the Turkish Cypriot Attorney General’s Office considers the reports that are forwarded to him by the Turkish Cypriot police and may decide whether there is adequate evidence to justify prosecution for a crime that took place in 1963 or in 1974, or to provisionally close the investigation or re-open same when new evidence or information comes to light. It is also mentioned that the Attorney General’s Office prepares a Report that explains the steps taken in the criminal investigation.

It is unfortunately noted that there is only selective and limited information as to any, and/or any effective, investigation on both sides of the divide, and any such information is available only because it was brought before the ECtHR.

The role of the Police

In the above-mentioned power of the Attorney General to prosecute, the role of the Police authorities is instrumental as they are the body empowered to conduct the relevant investigation. However, their role in the missing persons cases has not proved particularly active.

Despite our efforts to receive relevant information from the Police, we received no reply to our request; nor did we receive relevant and/or adequate information from other authorities of the RoC to this respect. However, based on the available information through the ECtHR case law and limited information received from the Office of the Commissioner to the Presidency, it is our understanding that after the CMP identification of a Turkish Cypriot missing person, their (CMP) Summary Report and Exhumation Report are passed on to the RoC Police to proceed with investigation. Nevertheless, it remains generally unknown (with the exception of cases before the ECtHR) whether all cases have been investigated, what steps have been taken and what has resulted from any such investigation.

It also remains unclear to the authors of this report exactly what information the CMP shares with the Police, considering the obligation of confidentiality under which the CMP collects relevant information.

⁷⁸ Kovras (n 62) 38

There is some limited information for cases where relatives were called by the RoC police to testify; these occurred in 2012 or 2013. Usually the information elicited was used to update the individual files of missing persons and to share such information with the CMP.

One more issue that has been raised and arguably haunts the RoC Police is their role at the time of the events and the crimes committed. There have recently been several journalistic pieces published on the role of the Police in the period 1963-1964. This issue is especially sensitive to Turkish Cypriot families, some alleging having witnessed members of their families taken away by Police officers in uniform, presumably to be questioned, but never seen again.

The commencement of serious investigations with the assistance of the police would be a way to restore trust.

According to Turkey's submissions before the CoM of the CoE, there is a standard procedure between the CMP and the Missing Persons Unit (MPU), established by the Turkish Cypriot authorities, whereby the CMP conveys the files of identified persons to the MPU for further investigation. It is further stated that the MPU conducts criminal investigations by compiling all relevant evidence, examining documentation, exhibits and other material associated with the case, and then preparing a report for each missing person identified by the CMP. We have not traced any such relevant report, since as per our information, these are not available to the public.

It must be noted that on several occasions, in the course of the proceedings before the ECtHR, Turkey argued that the relatives were not cooperating with the MPU or that the relatives were the reason they were unable to carry out an effective investigation.

According to information received from relatives of Greek Cypriot missing persons, there are times that they do not trust the MPU or they are even afraid to cross the Green Line in order to visit and cooperate. It should be also noted that it is questionable whether the MPU is actually accessible to Greek Cypriot relatives, due to the unit's exclusive use of the Turkish language.⁷⁹ Moreover, there are relatives who would be willing to cooperate, but they were not aware of this option.

It is interesting to note that each side appears to investigate the missing persons cases of the other side without any (reported) cooperation and/or exchange of expertise or information.⁸⁰ This is clearly a significant obstacle to any meaningful investigation. To this effect it is relevant to refer to the recent case of *Güzelyurtlu and Others v. Cyprus and Turkey*, referred to the Grand Chamber of the ECtHR, which is not related to missing persons, but rather to the failure of the Turkish and the Cypriot authorities to cooperate in a murder investigation. The Court (Third Section) ruled that there had been a procedural violation of Article 2 (Right to

⁷⁹ Council of Europe, Committee of Ministers, 124th meeting (September 2017), *Communication from a NGO (08/09/2017) and reply from the authorities (14/09/2017) in the cases of Cyprus v Turkey and Varnava and others v Turkey (Applications no 25781, 16064/90)*, Reference No DH-DD(2017) 1009, available at: <https://rm.coe.int/native/09000016807457c3>

⁸⁰ *Güzelyurtlu and Others v. Cyprus and Turkey*, Application No 36925/07 (ECtHR, Judgment 4.4.2017)

Life) of the Convention because of the failure of both States to cooperate effectively and take all the necessary steps to facilitate and realise an effective investigation.

Generally, it has been noted that in the mind of society on both sides there has been no political will to make adequate, complete and effective investigations. Furthermore, independent researchers who have been collecting and publishing information for years regarding the events before and during 1974 reported that they were the last ones to be contacted by the police, or that they were never even approached, despite the considerable information they had collected and despite their efforts to share it.

Over the years, it appears that there has been no clear political will or long-term strategy in terms of the issue of the missing persons—in fact, by both the local and the international actors involved. Hence, it has been left up to those involved to raise awareness of the above-mentioned difficulties, beyond the political blame culture at play today. It is they who must form a coherent, cooperative strategy to address earlier mistakes and omissions. In 2018 a number of political, diplomatic and civil society circles repeatedly made statements on the additional pressure exerted by the passage of time, which leads to the loss of valuable information, either through diminishing evidence or the death of witnesses who never gave information.

The lack of awareness among those involved, those directly affected, as well as the society in general, has allowed exploitation in the pursuit of political interests. This is also due to the lack of inclusive dialogue and acceptance of constructive criticism. Therefore, we strongly believe that full transparency from all relevant authorities and the strengthening of public dialogue would significantly improve the exchange of information as well as the effectiveness of the available mechanisms.

THE COMMITTEE ON MISSING PERSONS

The CMP is considered by many to be the most successful collaborative project of the Greek Cypriot and Turkish Cypriot communities. Indeed, it is the first such project to have been undertaken by two sides in a conflict before the conflict is resolved,⁸¹ and its success, in some respects, during the last five years is notable. However, one cannot overlook the fact that it took nearly four decades for the CMP to start producing any results, and that has led to considerable criticism and numerous concerns. Thus it is not surprising that in 2018 the CMP experienced significant difficulties in continuing its work.

The CPM was established in a joint decision of the representatives of the two communities in April 1981. It was envisaged to be ‘an investigatory body for the tracing of and accounting for missing persons.’⁸² However, due to the lack of consensus on a number of procedural matters by the end of that year the Committee failed to initiate any substantial work. This prompted the UNGA to pass a Resolution in December 1981, calling upon all parties to proceed with the investigative work without any further delay.⁸³ In 1982, the UN Working Group on Enforced Disappearances visited the island for the first time, and judged the CMP as ‘not only adequate, but also [the] appropriate machinery’ to resolve the outstanding cases of missing persons in both communities, despite the fact that the CMP’s work had already halted, and the Working Group referred to efforts to ‘reactivate’ it.⁸⁴

In the decade that followed, the CMP’s work went through a continuous on/off process, which led the then UN Secretary General Mr. Boutros-Ghali to explicitly state, in December 1996, that he was ‘considering the merits of continuing United Nations support to the Committee,’⁸⁵ after sending two letters to the leaders of each community in April and December 1996.

⁸¹ Committee on Missing Persons in Cyprus, Documentary ‘Digging for the future’ available at: <http://www.cmp-cyprus.org/content/digging-future-cmp-documentary>

⁸² United Nations, Economic and Social Council, *Question of the violation of Human Rights and Fundamental Freedoms in a part of the world, with particular reference to colonial and other dependent countries and territories, including a) Question of human rights in Cyprus*, E/CN.4/1982/8 (4 February 1982) available from undocs.org/E/CN.4/1982/8 para 3

⁸³ General Assembly resolution 36/164, *Missing persons in Cyprus*, A/RES/36/164 (16 December 1981) available from undocs.org/A/RES/36/164

⁸⁴ United Nations, Economic and Social Council Report E/CN.4/1983/14 (n 46) paras 43-46

⁸⁵ United Nations, Security Council, *Report of the Secretary-General on the United Nations operation in Cyprus*, S/1996/1016 (10 December 1996) available from undocs.org/S/1996/1016 para 27

Also in 1996, Amnesty International, which had already been involved in the issue of the missing persons in Cyprus since 1975 and had made various efforts to promote an investigation of the highest standards, published a 'Proposal to the United Nations to establish an effective commission of inquiry to investigate "disappearances", "missing" persons and deliberate and arbitrary killings in Cyprus'.⁸⁶

The document was highly critical of the CMP's failure to achieve any substantial progress in the 15 years since its establishment and the shortcomings of its limited mandate, which will be discussed below. As a result, Amnesty International called upon the UN to establish a separate 'international commission of inquiry – which satisfies the strict international standards' so as to 'conduct a thorough and impartial inquiry into all cases of "disappearance"'.⁸⁷ It also explicitly called upon all parties to fully cooperate with the proposed commission, specifically referring to the need for (i) the families to learn the fate of their loved ones, (ii) for those responsible to be brought to justice and (iii) for the relatives to be compensated for their loss. These would be mandated in line with earlier Amnesty International proposals for other conflict situations, such as the missing persons in Bosnia-Herzegovina.

Moreover, Amnesty International referred more than once and both directly and indirectly to structural inadequacies of the CMP. These included insufficient authority, lack of experienced staff, confidential procedures and the lack of full cooperation among all parties; Amnesty International considered that the CPM was unable to effectively address the humanitarian goals and the international obligations concerning the investigation of relevant crimes. It then concluded, with reference to the UN Declaration on the Protection of All Persons from Enforced Disappearance (adopted by the UNGA in 1992),⁸⁸ that the CMP 'does not satisfy any of these requirements and its structure is seriously flawed'.⁸⁹ In addition, the report invoked the 1995 UN 'Guidelines for the conduct of United Nations inquiries into allegations of massacres',⁹⁰ with regard to the level of investigations required in cases of deliberate and arbitrary killings.

Many of the points raised by Amnesty International will be examined below in detail. Despite much criticism directed at the CPM, in the period 2012-2017 there was evidence of CMP's relative effectiveness (albeit 20 years after Amnesty International's above-mentioned proposals). Nevertheless, many of the earlier concerns and criticisms are now resurfacing, especially in light of the admitted lack of any substantive progress in 2018.

The 1996 Amnesty International proposals were rejected by the leaders of both communities, Mr Clerides and Mr Denktash. In 1997, further pressure was exercised by UN Secretary-

⁸⁶ Amnesty International (n 77)

⁸⁷ *ibid*

⁸⁸ General Assembly resolution 47/133, *Declaration on the Protection of All Persons from Enforced Disappearance*, A/RES/47/133 (12 February 1993), available from undocs.org/A/RES/47/133

⁸⁹ Amnesty International (n 77)

⁹⁰ The document was published in 1995, by the UN Office of Legal Affairs, New York

General Mr Annan, such that Mr Clerides and Mr Denktash finally reached an Agreement on 31 July 1997 to share all information at their disposal on the locations of mass graves, and to designate a person to proceed with the exchange of this information and proceed with the arrangements to facilitate the return of remains. According to the UN Secretary-General, if the agreement were to be 'faithfully implemented' it should have a positive effect on the work of the CMP,⁹¹ suggesting that the leaders did not have the full confidence of the UN. Despite the 1997 Agreement, the parties – and here the role of Turkey was noted in various fora and reports – were not really open to effective cooperation, leading the Committee to another deadlock.

The first apparently official⁹² exhumations were carried out in 1999, but were initiated unilaterally by the RoC, after public pressure when two women took it upon themselves to dig up the mass grave they suspected held their husbands' remains, according to information they had collected.⁹³ The process was facilitated by the international NGO 'Physicians for Human Rights'. In the meantime, the CMP had once again become inactive, resuming work in August 2004. It was not until July 2007 that the CMP returned the first remains to families of missing persons.

Terms of Reference of the CMP

The Terms of Reference (ToR) of the CMP are often at the core of discussions around the effectiveness of this committee. It is thus critical to examine and analyse these.

The CPM's first ToR,⁹⁴ stipulates that the Committee will consist of three members, a Greek Cypriot, a Turkish Cypriot and a Third Member, who is to be an official selected by the ICRC, appointed by the UN Secretary-General, and tasked to consult with the first two Members in case they disagree so as to reach consensus in the decision-making process, as per the second term. In addition, the CMP has no assigned chair; instead, the meetings are directed by the Members on a rotating basis for a period of one month, as per term 4.

It is clear from the above that the CMP operates on the basis of a very precarious balance of decision-making power distribution between the Greek Cypriot and the Turkish Cypriot side, with obvious difficulties this may lead to in practice.

Additionally, as per term 3, 'No other persons will participate in the deliberations or investigative work of the committee. No person directly involved with the issue of missing persons may be appointed as staff assistant'. This means that the relatives are given no official participatory role, in contrast to other similar mechanisms.

⁹¹ United Nations, Security Council, *Report of the Secretary General on the United Nations operation in Cyprus, S/1997/962* (8 December 1997) available from undocs.org/S/1997/962 paras 21, 29, 30

⁹² It is noted that the RoC permitted excavations and exhumations in 1979/1981 in the Lakatamia military cemetery in Nicosia, only in relation to Greek soldiers, who were buried there on 17.8.1974. There is no official position as to the reason for being done only for the Greek soldiers and not the Greek Cypriots; see *Tzivilaki and others v. Cyprus*, Application No 23082/07 (ECtHR Decision dated 14.10.2014

⁹³ Sant Cassia (n 9) 1

⁹⁴ Committee on Missing Persons in Cyprus, *Terms of Reference and Mandate* <http://www.cmp-cyprus.org/content/terms-reference-and-mandate>

Furthermore, according to the ToR and specifically term 6, all parties concerned will cooperate with the committee to ensure access throughout the island for its investigative work. Thus, CPM's efficacy relies on the good faith of the parties in allowing island-wide access, as this is not in the committee's mandate. The difficulty this causes is evident in the constraints imposed by Turkey over the years.

The mandate of the CMP covers 'the intercommunal fightings as well as the events of July 1974 and afterwards' as per term 7, which correctly encompasses the whole period covering 1963-1974, and not only the period 1963-1964 and the summer of 1974, as is frequently referred to— interestingly, also on the website of the CMP itself.⁹⁵

As per term 8, investigations are also to rotate 'to the extent possible', to ensure that there is equal progress with regard to the cases of both communities; this term reflects the deep lack of inter-communal trust. Our information indicates a proportionate prioritisation today, however exactly how this prioritisation works in practice is unclear since 'the committee's entire proceedings and findings will be strictly confidential' as per term 9, and given the fact that all three Members declined our invitation to be interviewed in the context of this project.

Additionally, according to term 11 of the ToR of the CMP, the 'committee will not attribute responsibility for the deaths of any missing persons or make findings as to cause of such deaths', revealing the failure of the parties to agree on a clear and comprehensive mandate for the CMP, noting instead its restrictions and limitations. This has been a point of major dissatisfaction to many relatives and a major criticism of many experts. Liza Zamba, a CMP psychologist who works with the families of the missing, has stated:

But it is never enough. The family always wants to know more. The bones only reveal so much and we can't tell them the cause of death, only that there is evidence of gunshot or blunt force injury.⁹⁶

Indeed, after finally receiving a Death Certificate subsequent to the lengthy process of identification, many relatives find it unsatisfactory that the cause of death is recorded as 'Unknown'. They know that it is likely that their loved one was brutally murdered, and they want to know more. Relatives are also aware that further analysis of the findings and more in-depth investigation could reveal the murderer and/or the circumstances of death. This will now—to a certain extent—be alleviated, with the recent announcement of the Commissioner of the Presidency of the RoC that the families of the missing persons will be given, at their request, a detailed forensic report.⁹⁷

The Greek title of the committee has also been questioned, and criticised as misleading— 'Διερευνητική Επιτροπή για τους Αγνοούμενους στην Κύπρο' (translated as 'Investigatory

⁹⁵ Committee on Missing Persons in Cyprus, *Homepage* <http://www.cmp-cyprus.org/>

⁹⁶ Danziger (n 33) 175

⁹⁷ Cyprus News Agency (n 60)

Committee for the Missing Persons in Cyprus)—as the CMP does not really investigate, but simply identifies missing persons. The title in the Turkish translation, ‘Kayıp Şahıslar Komitesi - Kıbrıs’ (Missing Persons Committee – Cyprus) is different, and as trivial as such semantic observations may appear at first glance, the fact that the relatives of the missing persons raise this issue reveals that it is indeed a matter that should be addressed by policy makers.

Another term that is rarely, if ever, discussed is term 12, which reads:

No disinterment will take place under the aegis of this committee. The committee may refer requests for disinterment to the ICRC for processing under its customary procedures.

In practice, this particular term appears to have become redundant over the years.

CMP Working Process

The working process of the CMP is divided into four main phases, as described below.⁹⁸

First is the *Archaeological Phase (1)*, where teams of Greek Cypriot and Turkish Cypriot archaeologists (each team has a total of four archaeologists; two from each community) carry out exhumations at locations chosen based on information that has been gathered by assistants to the Greek Cypriot and the Turkish Cypriot Member, respectively. The said information is often material given to them orally by private citizens, and is handled with strict confidentiality. There are no formal procedures for receiving, recording and archiving this information—ostensibly to ensure the informant’s anonymity.

In relation to the gathering of information within the context of the CMP work, in 2017, the CMP established an Archival Unit, which studied various archival sources, including the UN archive in New York, the National Archives in London and the ICRC Archive in Geneva, in an effort to find leads on potential burial sites, given that the incoming information became scarcer. While this is an important initiative, its delay has been criticised, while there are also concerns over the non-availability and/or non-accessibility of the findings.

Next is the *Anthropological Phase (2)*, which is the forensic examination of the remains. This analysis, aims to identify characteristics such as the gender and the age, pathological and dental features, and any clothing and personal effects.

At the *Genetic Phase (3)*, a tiny segment of each bone is sent to the contracted DNA Laboratory abroad to extract and analyse the individual’s genetic profile, and to then match it to the genetic material given by the relatives in separate DNA laboratories located in Cyprus.

The final phase, the *Identification and Return of Remains Phase (4)*, consists of two sub-phases. First, the Identification Coordinator brings together all involved scientists to gather the *ante-mortem* and *post-mortem* data gathered at each separate phase and ensure there

⁹⁸ Detailed information on: Committee on Missing Persons in Cyprus, *What we do* <http://www.cmp-cyprus.org/content/what-we-do> and Danziger (n 33)

are no discrepancies. Then, in the second sub-phase the CMP proceeds with the formal identification and informs the respective Cypriot Member, who will then inform the family. Relatives are invited to meet the scientists involved, in the *Family Viewing Facility* adjacent to the Anthropological Laboratory in the Buffer Zone, where they receive information on their missing relative – but no information on the cause of death – and view the remains, before they are returned to them for burial.

We have been informed that during the meeting with the relatives, only experts belonging to the respective community of the missing person are present. In addition, it was brought to our attention that during laboratory work, the cooperation between the two teams, one for each community, is not evident, as opposed to the work conducted in the Archaeological phase. This was noted in Amnesty International's 1996 report, which had noted that having staff composed of two separate teams, one for each community, as opposed to a sole international team, would inhibit witnesses' testifying and would be "one of its greatest obstacles".⁹⁹ Moreover, this is arguably inconsistent with the bi-communal character of the CMP or any reconciliation purpose underlying this process.

Furthermore, the lack of adequate psychological support to the families has been reported, in contraindication of the humanitarian character that this kind of process demands. The process of delivery of the remains and information of the relatives is most usually described as cold, cruel and inadequate – primarily due to the inadequate information provided to the relatives as to the cause and circumstances of death.

Statistics

According to the CMP website, at the time of preparing this report, the CMP had in its registry 2,002 missing persons, of which 1510 are Greek Cypriots and 492 Turkish Cypriots. Of these, the remains of 889 individuals (44.5% of the total number) have been identified and returned to their families of which 664 are Greek Cypriots (44% of the total number of the Greek Cypriot missing persons) and 225 are Turkish Cypriots (46% of the total number of the Turkish Cypriot missing persons). Moreover, to date, the archaeological team has proceeded with excavations at 1,219 sites, in many of which no remains were found.

With slightly less than half of missing persons identified, undoubtedly there is still a long way to go before the satisfactory conclusion of CMP's work.

The year 2015 is statistically the most successful in terms of the number of exhumations and identifications.¹⁰⁰ According to our information, this was primarily due to the exhumation and identification of known mass graves that held the remains of victims of well-known

⁹⁹ Amnesty International (n 77)

¹⁰⁰ Committee on Missing Persons-Cyprus, *Figures and Statistics on Missing Persons* (21 July 2018) <http://www.cmp-cyprus.org/content/facts-and-figures>

crimes in the Famagusta district. Despite the fact that all interviewees agreed that numbers should not be an issue, and little value should be given to statistics considering the importance of finding every single missing person for every family affected, it was a recurring statement that ‘less than half of the missing persons have been found’.

The authors agree with the general view expressed in the interviews—that statistics, while useful in evaluating the progress made, are not of major significance. Moreover, some may argue that dwelling on the past history of the CMP is of no use. Nevertheless, we believe that this overview assists in understanding, to some extent, the roots of the lack of trust and disappointment of the relatives of missing persons.

Potential reform of the CMP

It has been almost four decades since the CMP’s ToR were drafted. Despite earlier talks discussing their reform, both local politicians and diplomatic circles appear to have advised against this. As a result, any such efforts were abandoned.

When questioned on this subject, some of our interviewees were reluctant to consider a potential reform of the CMP, fearing that opening up discussion on reforming the CMP could impede its present work and give even poorer results. Others expressed the view that such a delay would primarily be politically convenient and could be exploited by politicians who prefer to avoid complicated historical matters.

We also note here that the NGO Truth Now has proposed establishment of a Truth Commission and/or the upgrade of the existing CMP to a Truth Commission for Missing Persons (TCMP) by way of amending its ToR.¹⁰¹

Even so, the progress that has been achieved has given society and the media a renewed incentive to talk about the missing persons and our common past—this despite the fact that the funerals on both sides have sometimes sparked displays of nationalism that emphasize the barbarity of the ‘other’, and highlight the failure of the two sides to publicly acknowledge the atrocities and create a joint space for mourning in empathy and solidarity with the ‘other’.¹⁰²

The lack of easy access to information held by the CMP, as well as the lack of an ongoing effective dialogue with the relatives and the society, and the lack of transparency in most aspects of CMP’s work have led to feelings of detachment and have reinforced the lack of trust between the two communities, rather than encouraging any reconciliatory potential.

The CMP could provide more transparency if, for example, they published a comprehensive Annual Report. This would significantly improve the exchange of information among all parties and would enhance people’s openness towards the sharing of information with the CMP investigators.

¹⁰¹ The full proposal by Truth Now is available at <https://www.truthnowcyprus.org/index.php/en/a-truth-commission-for-cyprus/item/27-proposal-for-amending-the-terms-of-reference-of-cmp>

¹⁰² Hadjipavlou (n 52) 185

Moreover, it is important that all available research —specifically, that already conducted by journalists and other independent researchers— be taken into consideration. It is our understanding that a considerable number of people have given information either to the CMP, the police, or even to the public; yet, such information appears not to have been adequately examined. This is a matter of grave concern, especially in a period where the relevant authorities have raised the problem of lack of information.

The above analysis is made in an effort to encourage and improve the work of the CMP; we do not wish to undermine its ongoing work and especially the valuable work of its experts. It is clear that the process of establishing the CMP was a lengthy, difficult and delicate one, paved with political and diplomatic hurdles and marked by high levels of mistrust among the parties. This however, only proves that any future steps must consider all parties involved, as well as the relevant expertise and guidance of global examples. We will address this in more detail in the following sections.

LEGAL FRAMEWORK AND REMEDIES

To assess the question of whether the missing persons issue in Cyprus has been addressed effectively and efficiently, we must also evaluate the legal framework and available legal remedies. We will not repeat any previous reference to relevant Cypriot legislation; our emphasis here will be on the international framework and legal remedies, as well as conclusions that have been derived within this context and the relevant case law.

Initially, the issue of missing persons was solely regulated through International Humanitarian Law provisions, under the 1949 Geneva Conventions (GCs) I-IV related to the protection of victims of armed conflict and specifically, GC IV on the protection of civilians, which states that all parties to the conflict must facilitate enquiries by persons looking for family members.¹⁰³

As the law evolved, the issue of missing persons today falls primarily within the scope of International Human Rights Law, as evident in the case law of the ECtHR in Strasbourg, which interprets and applies the 1950 European Convention of Human Rights (ECHR). The relevant articles within the context of the ECHR are Articles 2, 3, 8, 9, 13 and 14, protecting the right to life; the prohibition of torture, inhuman and degrading treatment; the respect for private and family life, the freedom of thought, conscience and religion; as well as the right for an effective remedy and the right not to be unfairly discriminated.

The protection afforded by the ECHR has been further reinforced by the CED,¹⁰⁴ a comprehensive international treaty drafted in 2006 and in force since 2010, which sets the minimum standards of acceptable state practice in cases of enforced disappearance. Due to the high humanitarian value of the convention, customary status would be the only way to ensure that all states are bound by it, even when they are officially opposed to acting in accordance with its provisions. With regard to this, organisations of the families of the missing, human rights NGOs and experts launched in September 2007 the International Coalition Against Enforced Disappearances (ICAED), which promotes the ratification and implementation of CED around the world.¹⁰⁵ In the same spirit, since 2010, 30 August is now observed annually as the International Day of the Victims of Enforced Disappearances.

¹⁰³ ICRC, *Customary International Law Database*, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter36_rule117

¹⁰⁴ For the state of ratification of the CED in Cyprus see the section on Individual Mechanisms and Remedies, under the information on the Ministry of Foreign Affairs of the Republic of Cyprus

¹⁰⁵ More information on ICAED available at <https://www.icaed.org/the-coalition/history-of-icaed/>

Article 24 of the CED is one of its most significant provisions and describes a victim as ‘any individual who has suffered harm as the direct result of an enforced disappearance’. Perhaps more importantly it also codifies the ‘Right to Know the Truth’, thus creating legally binding obligations on each State Party to give information on the circumstances of an enforced disappearance, ‘the progress and the results of the investigation and the fate of the disappeared’; and an obligation for each State Party to take ‘all appropriate measures to search for, locate and release disappeared persons’ or ‘respect and return their remains’ in the case of death. Moreover, it obliges State Parties to ensure that relatives have a Right to Reparation and to undertake measures that guarantee the non-repetition of violence.

Additionally, the CED establishes an innovative treaty body, the Committee on Enforced Disappearance. According to Article 30 relatives may directly refer a case to the Committee, as a matter of urgency. This authorises the Committee – subject to a number of criteria – to contact the State Party and request more information, so as to put pressure on the State Party to:

..take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation.¹⁰⁶

As stated above, in Cyprus, despite efforts urging the RoC to ratify the CED, the Republic has so far only signed it. This precludes the relatives of the missing persons in Cyprus from enjoying the full extent of the rights provided by the CED. Greece ratified the CED in July 2015, while Turkey has neither signed nor ratified it;¹⁰⁷ nor has it been integrated in the internal legal system of the Turkish Cypriot administration.¹⁰⁸

During the interviews, it was reported that the vast majority of the public is not aware of the CED, but there is a growing interest in obtaining more information. Nevertheless, one must be cautious in assuming the immediate, unrestricted and exact scope of the CED’s applicability to the Cypriot context. Thorough legal research, beforehand, is important.

Due to the wider exposure of Cypriots to the ECHR, this legal instrument is better known among them. However, fewer persons than expected were fully aware of its application in Cyprus. This shows once again the lack of awareness and the unavailability of precise and clear information, which becomes even more worrisome when it is the relatives who are so ignorant of important information.

¹⁰⁶ CED, Art 30

¹⁰⁷ For the full status of ratification of the CED see: <https://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>

¹⁰⁸ Polili (n 30) 70

With regard to the case law of the ECtHR, in the Fourth Interstate case of *Cyprus v. Turkey (Merits)*¹⁰⁹ it was stated that while ‘the CMP’s procedures are undoubtedly useful for the humanitarian purpose for which they were established, they are not of themselves sufficient to meet the standard of an effective investigation required by Article 2 (Right to Life) of the Convention, especially in view of the narrow scope of that body’s investigations.’¹¹⁰

It is also important to highlight that, as a result of this case and in particular the *Cyprus v. Turkey (Just Satisfaction)* judgement,¹¹¹ the ECtHR awarded compensation to the relatives of the missing as non-pecuniary damages.

In relation to this compensation it must be noted that it has not been paid yet –and the case is pending before the CoM of the CoE. Furthermore, we note that such compensation is only awarded to those on the list of the missing persons (1456 missing persons) that the RoC submitted to the ECtHR. This list does not represent all the missing persons in Cyprus, since a number of Greek Cypriot missing persons as well as the Turkish Cypriot missing persons have not been included in that list. This is particularly important in the context of TJ, since reparations are considered TJ’s most victim-oriented mechanism.¹¹² Reparations for victims of human rights violations are also meant to recognise wrongdoing, address the harm suffered and, in fact, aid the reconciliation and restoration of peace. The above confirms that the existing fragmentation needs to be resolved, so that all the missing person cases in Cyprus are treated holistically and indiscriminately.

Also evident from the above is a consistent trend of delays in the matter of the missing persons in Cyprus, which has also been noted a number of times, in various cases before the ECtHR. In particular, it has been noted that with the passage of time since the events, questioning of those who might have been able to shed light on the investigation is no longer feasible. This situation was also confirmed by the Attorney General of the RoC in the case of *Emin Mustafa and Others v. Cyprus*,¹¹³ concerning Turkish Cypriot missing persons who went missing in 1963 and their remains were identified in 2008. The subject of the ECtHR’s assessment in the latter case was the effectiveness of the investigation carried out by the authorities of the RoC following the discovery of the remains of the missing and in the said case, the ECtHR decided that the application should be rejected as manifestly ill-founded. As to the passage of time it has been also noted in several cases by the ECtHR that:

¹⁰⁹ *Cyprus v. Turkey (Merits)* Application No 25781/94 (ECtHR, Judgment 10.05.2001)

¹¹⁰ *ibid* [135]

¹¹¹ *Cyprus v. Turkey (Just Satisfaction)* Application No 25781/94 (ECtHR Judgment 12.05.2014)

¹¹² A. Macdonald, *Local Understanding and Experiences of Transitional Justice: A review of the evidence*, The Justice and Security Research Programme, Paper 6 (LSE, 2013) 43

¹¹³ *Semral Emin (Mustafa) and Others, Nazli Gürtekin and Others, Fatma Aybenk Abdullah and Others, Meryem Arkut and Others, Ayşe Akay and Others, Omer Hussein and Others and Ayşe Eray and Others v Cyprus, Greece and the United Kingdom* Application Nos 59623/08, 3706/09, 16206/09, 25180/09, 32744/09, 36499/09 and 57250/09

...with a considerable passage of time since an incident, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects of any effective investigation leading to the prosecution of suspects will increasingly diminish [...].¹¹⁴

The matter of delay though, and the political decisions to this respect have affected the relatives of the missing who had been for years inactive in relation to the pursuing of their legal rights in the hope that there were effective mechanisms in place to this effect.

It was then revealed that the existing mechanisms, the nature of the decisions and/or acts in relation to the matter of the missing persons, as well as the passage of time, have left them without effective remedy and without effective access to the available courts.

For example, in cases of missing persons brought before the Supreme Court of the RoC by both Greek Cypriots and Turkish Cypriots, it was decided that decisions relating to the missing persons fell under the authority of the President of the Republic and thus they were considered 'acts of government', and not under the jurisdiction of the Supreme Court, sitting as Administrative Court, to annul.¹¹⁵

It is interesting to note that in the cases concerning the Turkish Cypriots who went missing in 1974, the complaint was that, while the RoC was aware of the deaths of the missing persons, it had not searched for the corpses or brought the guilty persons to justice and that it had not taken the necessary actions to pursue an effective investigation to determine the whereabouts and fate of the missing persons. The RoC replied to this that they had been unable to pursue their intentions to exhume and identify corpses due to the agreement between the UN, the Turkish Cypriot side and themselves, according to which exhumations would be conducted by the common programme of the CMP. This reveals a call for effective investigation and justice, as well as the need of the relatives of the missing (reflecting also the society) for effective investigations to be carried out and the perpetrators to be punished, as well as revealing their continuing suffering and 'anguish at the thought that the killers live freely and lead normal lives.'¹¹⁶ Apart from the apparent disappointment and mistrust, it also reveals once again the politicization of the matter of the missing persons, which appears to relate to the considerable delay observed.

¹¹⁴ *Varnava and others v. Turkey* (n 65) [161], as quoted in N Kyriakou, *Enforced Disappearances in Cyprus: Problems and Prospects of the Case Law of the European Court of Human Rights*, Working Paper 2011/01, Interdisciplinary Research Cell in Human Rights (CRIDHO) (Université catholique de Louvain, 2011) 11 available at: <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO%20WP%202011-01.pdf>

¹¹⁵ *Panayiota Konstantinou and others v. Republic of Cyprus*, Case No 1253/00 and *Ozalp Behic, and others v. Republic of Cyprus*, Case Nos 589/06, 590/06, 591/06, 592/06, 593/06 (2008) 4 CLR 355

¹¹⁶ *Semral Emin (Mustafa) and others* (n 113) (ECtHR, Admissibility Decision, 3.6.2010)

Additionally, it is noted that, as revealed through relevant RoC domestic case law (with one case currently pending before the ECtHR),¹¹⁷ there were Greek Cypriot reserve soldiers who were collected by the National Guard on 17.8.1974 from the battlefield and buried in the areas under the effective control of the RoC. Despite available information in relation to this, the RoC did not proceed with the exhumation and identification of these bodies until 1999-2000. Upon learning of this the families of those missing persons experienced considerable pain and anger.

It is also interesting to note that, as reported by the ECtHR in *Varnava and others. v. Turkey*¹¹⁸ (hereinafter “Varnava case”):

The Court considers that the applicants, who were amongst a large group of persons affected by the disappearances, could, in the exceptional situation of international conflict where no normal investigative procedures were available, reasonably await the outcome of the initiatives taken by their Government and the United Nations. These procedures could have resulted in steps being taken to investigate known sites of mass graves and provided the basis for further measures. The Court is satisfied, however, that by the end of 1990 it must have become apparent that the problematic, non-binding, confidential nature of these processes no longer offered any realistic hope of progress in either finding bodies or accounting for the fate of their relatives in the near future.¹¹⁹

In the following years and in particular in the cases of *Papayianni and others v. Turkey*¹²⁰ and *Charalambous and others v. Turkey*¹²¹ lodged with the ECtHR in 2006 and 2008 respectively, the ECtHR in a 2010 decision noted that by the end of 1990 it was evident that the CMP procedure had failed to make any concrete advance and that there was no further evidence in the said new cases of any other form of investigative activity post-1990 which could have provided the applicants some indication, or realistic possibility, of progress. Thus, unlike the Applicants in the *Varnava case*, the cases of a number of Turkish Cypriot and Greek Cypriot relatives of missing persons, especially those of Turkish Cypriot missing persons since 1963-64, were rejected by the ECtHR on the basis that they were introduced out-of-time.¹²²

¹¹⁷ *Attorney General of the Republic v Andriani Palma and others*, Appeal No 44/13, Supreme Court Judgment dated 19.11.15; *Republic of Cyprus v Vasos Vasiliou and others*, Appeal No 381/2010, Supreme Court Judgment dated 26.5.15; currently pending before the ECtHR as *Georgia Vasiliou and others v Cyprus*, Application No 58699/15 lodged on 24.11.2015

¹¹⁸ *Varnava and others* (n 65)

¹¹⁹ *ibid* [170]

¹²⁰ *Papayianni and others v Turkey* Application Nos 479/07 4607/10 and 10715/10 (ECtHR, Admissibility Decision 6.7.2010)

¹²¹ *Charalambous and others v Turkey*, Application No 46744/07 (ECtHR, Admissibility Decision, 1.6.2010)

¹²² *Baybora and others v Cyprus*, Application No 77116.01 (ECtHR Decision dated 22.10.2002); *Karefyllides and others v Turkey*, Application No 45503/99, (ECtHR, Decision dated 1.12.2009)

In a case submitted in 2001 by Turkish Cypriots for their relative that went missing in 1964, the ECtHR noted that for 25 years nothing was done by the Applicants to bring the alleged disappearance to the attention of the authorities and that after their application before the CMP they have been waiting for another 12 years to lodge their application to the ECtHR.¹²³ It appears that although the CMP was initially receiving requests for investigation and relevant information, it was unable to bring any of these investigations to a conclusion, due to lack of cooperation of the parties involved, as described in Section 4 above.

The above reveals a situation where cases of serious human rights violations have been left hanging or without remedy due to legal limitations and/or procedural - not substantial - grounds, as well as due to delay and/or inaction of the relevant Respondent Governments. It also reveals that the relevant governments lack any alternative effective remedies.

Cases that are submitted to the ECtHR seem to have been successful in the sense that the court can exercise pressure on the governments involved; for example in the case of *Tzivilaki and others v. Cyprus*,¹²⁴ relating to Greek soldiers who were killed by friendly fire in 1974 in the area of Tymvos, in Makedonitissa Nicosia. The RoC finally carried out the long-anticipated exhumation from Tymvos and also assumed responsibility and offered apologies to the families. It is, however, important to note that this case did not involve missing persons but persons who were "known-dead". Nevertheless, it is relevant since there are other cases submitted to the CMP concerning the known-dead, especially regarding the catalogue of the Turkish Cypriot missing persons, where the remains have not been identified nor returned to the families.

In conclusion, deriving guidance on what would constitute an effective remedy, according to the established case law of the ECtHR, we set out below the basic requirements that need to be met:

- the authorities must act of their own accord once the matter has come to their attention;
- the investigation must be able to lead to the identification and punishment of those responsible;
- the persons responsible for the investigation must be independent from those implicated in the events;
- the investigation must be able to determine whether the force used in such cases was/ was not justified in the circumstances;
- reasonable steps must be taken to secure evidence concerning the incident;
- the investigation must be able to establish the cause of death or the person responsible, otherwise it will be deemed deficient;
- the case must be investigated promptly and concluded within a reasonable timeframe.

¹²³ *Karabardak and others v Cyprus*, Application No 76575/01 (ECtHR Admissibility Decision, 22.10.2002)

¹²⁴ *Tzivilaki and others v Cyprus*, Application No 23082/07 (ECtHR decision 14.10.2014)

GOOD PRACTICES IN THE CONTEXT OF TRANSITIONAL JUSTICE

People missing in the context of a conflict is a global phenomenon, frequently used by the opposing parties to a conflict to instigate feelings of insecurity and terror among the relatives of the missing and also within a community or a society as a whole. It is for this reason that the international community has undertaken considerable efforts – which have been intensified in the last decade – to form strategies and take legal measures to deal with the urgency of this phenomenon. The epitome of these efforts has been the CED, along with a number of TJ mechanisms developed in this regard by various states around the world. Here, we aim to present relevant information and examples that might prove useful in undertaking similar initiatives in Cyprus.

Transitional Justice

Having its roots in regime changes in Latin America and Eastern Europe, the development of TJ is usually dated to the late 1980s. A multi-disciplinary concept associated with political change and addressing human rights violations and abuses by former regimes, it has been identified as a multi-dimensional and multi-stakeholder *process*, as opposed to an anticipated end goal.¹²⁵

Today, there is a plethora of relevant initiatives from across the world. While some are rather limited in their objectives, others combine different methodologies to achieve more comprehensive results. For example, there might be a series of different projects running at the same time, or some may focus on the perpetrators, while others (more frequently) may put the victim at the centre of the process. The core value of TJ mechanisms is their multi-disciplinary approach and multidimensional scope, which characterize their design and implementation.

Increasingly, the concept is also used today in the context of conflict and post-conflict societies, which makes it of direct relevance to Cyprus. It has been identified that in the Cypriot context, the primary aim of TJ is to challenge the official discourses, historiographies

¹²⁵ M. Crettol, A. M. La Rosa, 'The missing and transitional justice: the right to know and the fight against impunity' (2006) 88 *International Review of the Red Cross* 355

and dominant narratives that have been developed by each community and help both communities sincerely address their past.¹²⁶ On the issue of the missing persons, however, TJ is relevant to the Right to Know the Truth and the fight against impunity, since the phenomenon of missing persons is closely associated with the commission of violent crimes.

Generally speaking, TJ mechanisms may be divided into two categories: judicial mechanisms, meaning the establishment of international, domestic or hybrid tribunals which are mandated to investigate and try perpetrators of alleged crimes; and non-judicial mechanisms, such as truth-finding committees, documentation processes and memorialisation initiatives.¹²⁷ We present below a number of examples from around the globe.

Global Transitional Justice initiatives

Argentina was the first and thus the most experienced state in the world to implement TJ mechanisms, following the fall in 1982 of the most recent military dictatorship. In fact, the very first efforts in Argentina aimed at establishing the fate of the estimated 10,000 to 30,000 people who disappeared or were killed during the country's 'Dirty War'.

As early as 1983, the new democratic government of Argentina established the National Commission on the Disappearance of Persons (CONADEP), which, in the course of a year, took testimonies, collected documents and data and addressed legal and administrative issues, before publishing a 50,000 page-long report, known as the 'Nunca Mas' (Never Again). The report contained detailed findings on the crimes and a demographic categorisation of the missing persons, along with information on how this affected the families and information on broader topics regarding the time of repression. CONADEP drew recommendations, among which, the need for the provision of reparations and the public acknowledgement of the State's responsibility for the human rights violations.

There were also strong grassroots initiatives, such as the famous 'Grandmothers of Plaza de Mayo', established in 1977, before the fall of the dictatorship, which along with CONADEP promoted the establishment of the Argentine Forensic Anthropology Team (EAAF), a non-governmental, non-profit, scientific organisation, established in 1984. Like CMP, the EAAF applies primarily forensic anthropology and archaeology in the investigation of human rights violations in Argentina and worldwide, making Argentina a global leader in forensic anthropology. Thus, it comes as no surprise that the EAAF has supervised and trained CMP staff in Cyprus. The work of the EAAF led to the establishment of another entity, the National Bank of Genetic Data (BNDG), which since 1987 has been storing genetic material to establish genetic correlation between the grandparents and their grandchildren whose parents disappeared. Moreover, material memorialising the violence of the past is available to the public at the

¹²⁶ U. Bozkurt, C. Yakinthou, *Legacies of violence and overcoming conflict in Cyprus: The transitional justice landscape* (PRIO Cyprus Centre, 2012) 5

¹²⁷ *ibid*

'Remembrance and Human Rights Centre', a memorial and a museum located on the grounds of one of the largest detention camps (also a place of torture and extermination) during the time of the dictatorship. The centre aims to raise awareness and promote remembrance of the suffering experienced by the Argentine society; it is also a tribute to the victims, transforming a place of suffering into a place of remembrance and honour for the victims.

Nevertheless, even in a country so advanced in its pursuit for justice, efforts to find the disappeared and initiatives to address the healing of the society are far from complete. The Argentine paradigm is an excellent example of how TJ is not a goal to pursue, but rather an evolving process in need of continuous readjustments, making use of diverse sources and tools to ensure the effectiveness of such measures. Moreover, we can also see how an evolutionary approach to TJ leads to the creation of new entities, which contribute to the work of existing mechanisms.

Spain on the other hand, is a case that is completely opposite to Argentina, showing how *not* addressing the past simply postpones the process, as the younger generation sooner or later demands to know the events that formed their present. When in 1977 Spain transitioned into democracy following Franco's dictatorship, a law mandating amnesty, known as the 'Pact of Forgetting', was enacted. This law aimed to leave old wounds behind in order to focus on the restoration of democracy.¹²⁸ Like in Cyprus, a 'pact of silence' was effectively imposed. It was not until 2002 that a legislation acknowledging the victims of the civil war and the dictatorship was passed, after the UN Working Group on Enforced and Involuntary Disappearance heavily criticised the state for failing to take any action to resolve the problem of the disappearances under the dictatorship.

Further, in 2004 an Inter-ministerial Commission was established to examine the rehabilitation of victims of the dictatorship, awarding the first grants for exhumation and identification procedures. In 2007, 30 years after the end of the dictatorship, the government passed a 'Law on Historical Memory' to facilitate the process of locating, exhuming and identifying the victims of Francoist repression, who were often buried in mass graves.¹²⁹ This would be achieved through a process of mapping the locations of all discovered mass graves, with the contribution of local NGOs and academic institutions. Such moves facilitated the efforts of the families of the missing to undertake their own investigations, albeit the policy was criticised for disproportionately burdening the families, rather than the competent authorities, with the responsibility of undertaking the necessary research.¹³⁰

¹²⁸ International Commission on Missing Persons, *Where are the Missing? Spain* available at: <https://www.icmp.int/the-missing/where-are-the-missing/spain/>

¹²⁹ A. Smith and others, *Closing the gap: The role of non-judicial mechanisms in addressing impunity* (No Peace Without Justice, 2010) 238-245

¹³⁰ International Commission on Missing Persons (n 125)

It is widely believed by many experts that the Spanish example serves as proof that the practice of completely disregarding the past and discounting the need for laws and mechanisms to deal with the past, will eventually haunt the society that has not addressed the previous trauma. In Spain, it was frequently the grandchildren of those who had fought in the civil war who had the loudest voice in demanding a legal reform that would enable them to know the truth of Francoist Spain. At the time of writing, in July 2018, the government of Spain had announced plans to set up a Truth Commission tasked with investigating crimes against humanity committed by the military regime.¹³¹ There are already discussions on the need to revise the 2007 Law on Historical Memory and a decision to exhume the remains of Franco himself has just been announced, amid strong opposition from his family.

In the interviews we conducted, a number of interviewees suggested that it would be wrong to compare the case of Cyprus – an armed conflict – to cases of former dictatorships. At first glance such opinions may appear to be valid, but we must remember that the social and psychological elements associated with violence are similar. In its simplest form, TJ is a socio-legal process addressing these elements, albeit admittedly frequently affected by political considerations.

For instance, **Morocco's** 'Justice and Reconciliation Authority' (IER) was set up in 2004, with no 'transition'. While it remained a constitutional monarchy, when King Mohammed VI assumed the throne in 1999 (following the death of his father, King Hassan II) he decided to investigate the cases of those disappeared and tortured by the repressive government during his father's reign. This initiative was a follow-up to King Hassan's II 1990 initiative to set up a 'Consultative Human Rights Council' (CCDH), in an effort to address the people's growing dissatisfaction. The IER cooperated closely with civil society activists and held public hearings that were broadcast live on television. The IER did not allow perpetrators to be named, and instead focused on giving a platform for the victims of the regime to share their experience. Many victims were dissatisfied with the lack of persecutions, but at the same time the IER established state responsibility, made recommendations for reform, responded to requests for a formal apology and established a communal reparations programme, which is considered one of the most advanced to date.¹³²

Moroccan and Cypriot experts, as well as relatives of missing persons, convened to exchange good practices in two roundtables, organised in Morocco and Cyprus, in December 2014 and May 2015 respectively, with the support of the Euro-Mediterranean Federation Against Enforced Disappearances (FEMED). Drawing from the experience of the IER and the CMP, the two roundtable discussions identified conditions necessary for the operation of any commission relevant to missing persons. Among these were the guaranteed independence

¹³¹ Stephen Burgen, 'Spain launches truth commission to probe Franco-era crimes' (*The Guardian*, 12 July 2018) available at: <https://www.theguardian.com/world/2018/jul/12/spain-to-establish-truth-commission-for-franco-era-crimes>

¹³² Association for Historical Dialogue and Research (AHDR), *Thinking Historically about Missing Persons: A guide for Teachers - 3: What do we mean by Missing Persons? Experiences and Responses Around the World* (Nicosia, 2011) 49-51

of all commissions, the access to information, the *a priori* agreement on the catalogue of the missing persons and the protection of the principle of participation of all the families in the process. In addition, other factors included the in-depth analysis of the needs of the families, the availability of adequate human, financial and operational resources to the commission, the participation in international networks, and a clear and sufficiently wide mandate.¹³³

Cypriot academics Bozkurt and Yiakinthou have recognised in earlier research that the tendency in Cyprus is to reject the model of a Truth Commission, on the basis that such bodies usually focus on the acts of perpetrators. However, as we have seen from the above, such reasoning might not be valid. Further, Bozkurt and Yiakinthou also give the example of the **Guatemalan** 'Historical Clarification Commission' (CEH), as a possible alternative for Cyprus. The CEH held no public hearings, had no amnesty-granting power and, like Morocco, did not name individual perpetrators.¹³⁴

All of the above examples indicate three important points that are relevant to Cyprus. First, the creation of a new mechanism does not prevent an existing mechanism from continuing with its established mandate; on the contrary, they most frequently fill in gaps that the existing system consistently fails to address. Thus, any fears that an innovative approach to the missing persons in Cyprus will deter the progress of the CMP are unfounded. Second, a strong TJ policy has to recognise such needs and adapt to them. Therefore, there is a need for a creative, multidisciplinary and multidimensional process, addressing the issue from a social, psychological, legal and financial aspect. Lastly, the number of years that have passed since a regime or a conflict is not an issue. TJ is closely associated with the needs in a society at a given time. Especially with regard to missing persons, time should not preclude the need to address the issue, given the highly personal and humanitarian nature of this phenomenon.

Current trends in Cyprus

Currently, the public in Cyprus remains highly unaware of the concept of TJ. Without awareness, and a public consultation process, any other initiative would be prone to political and media exploitation, misrepresentations and misconceptions, such as those repeatedly witnessed over the years. Therefore, any decisions should not be taken prematurely, as that would risk failure.

There is already considerable research that offers an initial indication of trends, as well as the experience of NGOs / other institutions in dealing with reconciliation or ways to deal with the past. This is in line with previous recommendations by Yiakinthou, who indicates four key lessons in designing TJ processes:

¹³³ Fédération Euro-Méditerranéenne Contre Les Disparitions Forcées (FEMED), 'Justice Transitionnelle – Quels apports pour une transition démocratique effective?' (Paris, 2016) available at: <https://disparitions-euromed.org/sites/default/files/Justice-Transitionnelle.pdf>

¹³⁴ Bozkurt (n 126) 18

- Be inclusive and focus on the process as well as the desirable final product,
- Engage civil society actors,
- Embrace disagreement,
- Ensure that potential donors receive appropriate guidance.¹³⁵

In 2017 a multidisciplinary research study was undertaken by the universities of Cyprus, Kent, Keele, St. Mary's and Oxford entitled 'The Internally Displaced in Cyprus and Return Intentions: Social Psychological, Sociological and Political Determinants', and the researchers interviewed a sample of 801 Turkish Cypriots and 811 Greek Cypriots. The interviews took place in December 2017 following the failure of the most recent round of negotiations. Among the Greek Cypriots, more than half support the prosecution and punishment of perpetrators and do not support amnesty in exchange for testimonies in the context of a truth-finding commission. However, the picture is more nuanced in the Turkish Cypriot community, where some support prosecution and punishment, but the majority maintain a neutral position. Generally, the research shows that convergence is rare in the opinions held by each community, which should not come as a surprise given the radically different narratives that have developed on each side of the divide. This, therefore, suggests that a factual investigation might be the first priority at present, especially in light of the time factor in relation to finding more information on the missing persons.

In the interviews we conducted, we briefly brought up the issue of TJ, establishing that, with few exceptions, there was only a vague awareness of the term and what it encompasses. A person's degree of understanding of TJ appears to be unrelated to their personal or professional proximity to the matter of the missing persons. Asked whether they would expect a traditional (judicial) approach to the restoration of justice, many expressed the view that it is not their desire to see 'elderly men sitting on the bench of the accused in a courtroom or go to prison'. Nevertheless, there is a desire and a need to know who committed the crimes as well as a request for remorse and apology.

¹³⁵ C. Yiakinthou, *Transitional Justice in Cyprus: Challenges and Opportunities* (edited by A Sözen and JL Ordway) Security Dialogue Project, Background paper (Berghof Foundation and SeeD, 2017) 10-14

CONCLUSIONS - RECOMMENDATIONS

In the present report we investigated the measures that have been taken to address the issue of missing persons in Cyprus, from the earliest days of the conflict to the present. In this process we have identified key concerns and issues in relation to both local and international actors involved. In addition, we referred to the current legal framework, domestically, regionally and internationally, the work of relevant authorities and the CMP, and finally briefly examined the potential application of TJ mechanisms in Cyprus. This report aims to offer recommendations for improving the available mechanisms and for the establishment of new ones.

At the heart of our analysis is the overriding principle that the issue of the missing persons is a humanitarian one, and that it should be treated as such by all relevant policy and decision makers, especially in the face of serious criticism that this has not always been the case. Drawing from the above analysis we here present a list of recommendations that could be implemented in the short, medium and longer term.

In order to formulate our recommendations, it was necessary to focus on the needs of those affected - the victims, namely, the relatives and the society - as well as on the political, institutional, cultural, financial and other shortcomings and gaps that were identified. It is also noted that while the primary focus is on the needs of those directly affected, namely the relatives, the trauma is reflected in the society, which is indirectly also a victim. Hence, the needs of the society are also taken into consideration in formulating our recommendations.

On the basis of our analysis in the previous sections, the following observations are made:

There has been considerable delay in effectively addressing this humanitarian issue; in fact it has not been always treated as such, but it has rather been treated as a political issue. There has not been adequate active involvement of the relatives of the missing, and there have only been limited efforts to understand their needs. The families of the missing persons have not always been treated with the appropriate attentiveness or respect, nor have they been afforded appropriate psycho-social support.

Furthermore, there is a lack of transparency and no effective access and this applies to all the available mechanisms.

Overall, we note that there is a tendency towards silence regarding many aspects of the issue in Cypriot society and a notable lack of awareness at all levels. The ECtHR has noted that

both sides to the conflict may “prefer a ‘politically sensitive’ approach to the missing persons problem”¹³⁶ and thus, one could argue that, there has been no strong political will to effectively address the missing persons issue and that the parties involved and the available mechanisms are not effectively working towards the establishment of truth in relation to the missing persons in Cyprus.

The noted reluctance to speak out about “inconvenient truths” and to challenge the dominant representations mainly put forth through political propaganda, have served to strengthen the culture of “forgetting” rather than “remembering” and have perpetuated a lack of trust between the two communities.

In general, there are no coherent reparation programmes, no formal apologies, no assumption or attribution of responsibility, no restoration of the truth, no closure, no trust.

Having noted the above, our recommendations are made in the context of TJ and the Right to Truth, as an individual and collective right.

It is recommended that transparency of and accessibility to all the available archives are secured and provided by all parties and authorities involved. This is part of the social right to know as well as of the duty of the State to remember. In any event, it is the obligation of the parties involved to ensure preservation of the available archives especially during periods of transition. It appears that currently there is no adequate framework in place to safeguard this right and the relevant authorities do not appear willing to cooperate to this effect.

Having analysed the mandate and the work of the CMP, it is noted that this body operates under confidentiality, which leads to lack of transparency; it does not investigate or establish the cause of death or attribute responsibility; it does not enjoy unhindered access throughout the island. As also established by the ECtHR, it falls short of the standards of an effective remedy and it certainly does not comply with the duty to remember since it does not help safeguard memory and evidence. However, having also noted the positive work of the CMP, especially with regard to the exhumations and the identification of the remains of a considerable number of missing persons, as well as the expertise that the CMP has developed through the years in some respects, it is recommended that the work of the CMP is supported and supplemented with other mechanisms, the mandate of which will be clear and comprehensive and which will have the necessary powers and resources allocated to them. In any event, the level of transparency in the work of the CMP has to be improved.

It is imperative that the CMP act in good faith and evaluate all criticism directed at it and assess the changes that need to take place. The fact that since 1996 there have been major concerns raised by an international organisation such as AI, makes this need even more urgent, along with the fact that they have openly admitted that they find themselves in a

¹³⁶ *Varnava and others* (n 65) [193]

deadlock due to the lack of sufficient information. As the primary mechanism for addressing the issue of the missing persons, the CMP has the duty and the responsibility to ensure that it responds to societal demands, even in the face of practical and technical difficulties. A positive step forward would be for the CMP to engage in public dialogue, especially with both organised and non-organised groups of relatives.

It is thus recommended that, unless CMP becomes more transparent in relation to its work and more engaged with the relatives' and society's needs, including the amendment of its mandate, then additional mechanisms, like a Truth Commission, should be established to address its inefficiencies and meet the standards of an effective remedy. It is recommended that any new mechanism should have the character of a "living instrument", meaning that it will be able to adapt and evolve with the needs of the society, since in its very nature, TJ is a long-term process.

As analysed above, there are traditional mechanisms available for the investigation of the disappearances and the circumstances of death, for the attribution of responsibility and the punishment of the perpetrators; namely, the Police authorities and the Office of the Attorney General, available in both communities. However, as analysed in the previous sections, the relevant bodies have not proven to be effective and they have so far failed to cooperate towards this aim. It has been noted, among other things, that sometimes there are difficulties, including practical issues such as language, but also the issue of lack of trust and confidence in the relevant authorities. The reason for this is that the investigation into the Greek Cypriot missing persons appears to be pursued by the Turkish Cypriot authorities and the investigation of the Turkish Cypriot missing persons by the Greek Cypriot authorities, without first addressing the feelings of mistrust and lack of confidence to the other community.

It is thus recommended that unless there is effective cooperation between the Greek Cypriot and Turkish Cypriot investigatory bodies, an independent investigatory body be established with a clear mandate to effectively investigate the disappearances in Cyprus.

It is also strongly recommended that initiatives are implemented that will engage those affected in both communities in an open dialogue about their experience. This could lead to closure and could also contribute to the understanding of the common suffering and overcoming this together. Artistic and other innovative projects can contribute to this. For example, a victim-focused interactive project/exhibition could be organised, engaging people from different generations to share the stories and needs of the victims in an effort to raise awareness and catalyse discussion about the past, the present and the future. To this effect, it is important to financially support the civil society, artists and academic circles that can work towards this.

Open discussions with the participation of the direct victims, the civil society and the relevant authorities are also recommended in relation to matters such as justice, punishment and forgiveness, paving the way to an understanding of the manner in which the society wishes to address its past and the perpetrators.

An open and constructive dialogue that involves the relatives of the missing persons, the civil society and the official authorities should be initiated as this will encourage a demand for accountability for earlier actions/ inactions in relation to the missing persons in Cyprus.

It is recommended that victims (the relatives and the society) are afforded with the right to reparation. Considering this, when seen on a collective basis, includes taking measures to comply with the duty of remembrance. To this effect, apart from the provision of appropriate compensation to all, the involved parties should be pressured to formally recognize their responsibilities with official declarations, including apologies, which would help restore the dignity of the victims and the society.

Furthermore, in this regard, we recommend that memorial monuments be erected, as these would not only honour and restore the dignity of all victims but would also serve as a means of remembrance. Such monuments would encourage the society not to forget, but to confront its past, underlining its duty as a society to guarantee the non-recurrence of such events. Strong participation of the civil society is recommended, as well as active encouragement of artistic and other projects to acknowledge the suffering inflicted on the families of the missing and honour the memory of those missing, regardless of whether their remains have been found or not, in line with society's duty to remember.

There is an urgent need to raise awareness of the domestic, regional and international legal framework and the mechanisms available in regard to the missing persons issue. All possible means should be employed, including awareness campaigns targeting all levels of the society. This would not only help those directly affected to pursue their rights, but potentially also encourage people with information to come forward and talk, since there will be a better understanding on the rights and obligations in relation to the said matter, and because such campaigns will represent a change in the traditional political stance of fear and silence.

There is also urgent need to have the CED implemented throughout the island, without further delay, to ensure that all those affected have access to the mechanisms available under this Convention.

Additionally, as it is well known, a people's knowledge of the history of its oppression is part of its heritage and as such must be preserved by appropriate measures. It is sad that the two communities in Cyprus have not confronted their past but have in fact avoided doing so. The memory of the past violence can be a source of hate and feelings of revenge; at the same time memory can be selective and interpretative. That is why it is important to preserve evidence and archives and deal with the past as soon as possible. It is doubtful whether the open trauma can be healed without remembering and confronting the past. Forgetting should not be the policy pursued; remembrance is recommended.

In relation to the above, it is also recommended that the educational system on both sides of the divide address the issue from an educational perspective, with manuals such as the 'Thinking Historically about Missing Persons: A Guide for Teachers' manual of the Association for Historical Dialogue and Research, being an excellent starting point. This will also contribute to the educational system's efforts to promote understanding in a diverse society such as the Cypriot one.

The currently available mechanisms are heavily influenced by the contradictory narratives that have been developed by each respective community, and their policies. Therefore, a sincere evaluation is necessary in order to resolve the disparities. The missing persons of Cyprus is the result of events common to both communities and this must be reflected in any future policies and/or initiatives.

Concluding, and having noted the sensitive nature of this matter, as well as the sensitive political balances, which cannot be overstated, it is highly recommended that all efforts are made towards the cultivation of a culture of truthfulness, where the ‘truth’ of the one side will not be tyrannical to the ‘truth’ of the other. If the experiences relating to the missing persons of both communities are exchanged in a humanitarian context, they can reveal the linkage and they can thus contribute towards a space of living in truthfulness and reconciliation.

Within the context of a negotiation process which is currently at a deadlock, and a society with reinforced calls for truth and justice, the present report observes the measures and steps taken in dealing with the issue of missing persons in Cyprus, from the earliest days of the conflict until today. Through conducting desk research and a series of anonymous interviews, the authors have identified key concerns which have arisen over the years, in relation to both the local and the international actors involved. The report also refers to the current domestic and international legal framework and the work undertaken by relevant authorities and the Committee on Missing Persons (CMP), before proceeding to briefly examine the potential application of Transitional Justice mechanisms in Cyprus. The observations discussed within the report build towards a number of recommendations for the improvement of the available mechanisms, as well as the potential establishment of new ones, in dealing with the missing persons in Cyprus. In formulating these recommendations, special focus was placed on the needs of those affected, who in this context include both the relatives and the society as a whole, in addition to the political, institutional, cultural, financial and other factors, shortcomings and gaps. At the heart of this report is the overriding principle that the issue of the missing persons is a humanitarian one and should be treated as such by all parties involved.

ISBN 978-82-343-0035-6 (print)



The report can be ordered from:
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