

DRAFT TRANSLATION 22.01.2013

DISTRICT COURT NICOSIA

BEFORE: M. Papamichael, (S.D.J.)

Case No 6661/2001

BETWEEN:

1. ANDRIANI PALMA
2. KALLIOPI PALMA
3. CHRISTINA PALMA

Plaintiffs

and

ATTORNEY GENERAL OF THE REPUBLIC OF CYPRUS

Defendant

DATE: 28.11.2012

For the plaintiffs: Mr Ach. Demetriades

For the defendant: Mrs Th. Mavromoustaki (hearing the judgment were Mrs C. Sophocleous and Mr S. Photiou)

JUDGMENT

Reservist Charalambos Palmas of Panteli was killed on the afternoon of 16 August 1974, whilst defending his homeland against the Turkish invasion. His body was collected the next day, on 17 August 1974, by the National Guard (following arrangements with the United Nations and the Turkish army) and transported by a military vehicle belonging to the National Guard, without being identified, and was buried with his personal effects in a mass grave in Lakatamia Military Cemetery with at least 30 other Greek Cypriots, whose tombstone read "UNKNOWN". Since August 1974, the Republic presented him to the plaintiffs (his wife and daughters) as a missing person, without ever investigating the procedure of collecting, transporting and burying these unknown dead (including Charalambos Palmas), although there were the strongest indications and witness testimonies that these persons were dead and buried in Lakatamia Military Cemetery.

Five years later, specifically from 1979 until 1981, under unknown circumstances, exhumations of Greeks who had fallen during the Turkish invasion took place in Lakatamia Military Cemetery, which were conducted in such haste and amateurism that serious problems in identifying those exhumed were created. For further unknown reasons, the exhumations in 1979 did not include Greek Cypriots who had been buried in Lakatamia Military Cemetery. In 1999, 25 years later, exhumations finally took place in Lakatamia Military Cemetery, and the Greek Cypriot soldiers – who had until then been considered missing persons – were identified, including Charalambos Palmas. His body was given to his family for burial.

In 2001, the plaintiffs filed the present action, claiming that the Republic, through its acts but mainly through its omissions (even given the war situation), violated fundamental principles of humanitarian law, fundamental constitutionally enshrined human rights, and its obligations according to International Conventions and in general legal duties derived from the law, which resulted in their suffering enormous mental torment and emotional stress and anguish because of the twenty six years of doubt and uncertainty that they had faced concerning their allegedly “Missing” husband and father. As a consequence, they seek compensation for the injustice and anguish that they have suffered.

Charalambos Palmas, a reservist in the 336th i.b., on 16 August 1974 was serving in the “Palloukia” outpost, in Ayios Pavlos Nicosia, together with five other soldiers. The supply to the outpost and its connection to the rest of the company had been cut off, whilst fierce battles were being waged in the area. In the afternoon of 16 August, the outpost “Palloukia” was taken over by Turkish troops and according to testimony I have before me, the six heroic fighters who were defending it surrendered to Turkish soldiers. According to further testimony I have before me, a little after their surrender, gunshots were heard behind the elevation on which the outpost was located, and on the next day, as I have already mentioned, six known bodies of the heroically fallen soldiers were collected to be buried as “unknown”. Charalambos Palmas and his fellow soldiers performed their duty to their homeland, which, according to Mr Demetriades, failed to respect his dead soulless body and notify his family of his death and burial, a matter for which it had or ought to have had knowledge. According to the pleadings, the Cyprus Republic failed to determine the deceased’s identity, which it was responsible for doing so at the material time, and omitted moreover to conduct any correct and/or reasonable and/or expected effective procedures within a reasonable time to identify the remains of the fallen, although it had or ought to have had knowledge of the graves containing the remains of the fallen. It furthermore

failed to take the necessary steps for immediate investigation of the relevant testimonies that had existed since August 1974 and to take the necessary and/or immediate steps to conduct thorough investigations and examinations of material evidence and did not notify the plaintiffs of his fate immediately and/or within a reasonable time, as it ought to have done. Even following the delayed, according to the Republic, receipt of the said evidence, as well as the re-examination of the files of the missing persons (I mean in 1991), the Cyprus Republic failed to proceed to the immediate exhumation, identification and delivery of the remains of Charalambos Palmas to the plaintiffs; instead, this took place after more than eight years, unjustifiably protracting the plaintiffs' anguish. Mr Demetriades' position was essentially that the Cyprus Republic did not perform, towards a worthy child and his family, its obvious duties under International Conventions and constitutionally enshrined human rights.

Beyond its general denials, the Cyprus Republic alleges that the plaintiffs were notified of the fallen's fate by the relevant authorities in 1993, and that plaintiff 1 (the wife) was kept informed during all stages of the investigation into her husband's fate. The Republic's main position in its pleadings is that, given the materials and data that existed, death could not be substantiated, and the circumstances (at the time) did not allow it to proceed to further steps such as exhumation and identification, until the final exhumation and DNA identification (as soon as this was feasible) of every person buried in the free areas was completed (see para.13 of the Defence). The Cyprus Republic also claims that one of the reasons of not carrying out the identification was the fact that many of the soldiers who were buried as unknown were not in a recognisable condition and did not bear any materials that would prove their identity.

A. PLAINTIFFS' EVIDENCE

The plaintiffs' (the wife and daughters of the missing/fallen Reservist Charalambos Palmas of Panteli) testimony in Court was harrowing. In a highly charged atmosphere, Andriani Palma relived her memories from the tragic day of the Turkish invasion (20.07.1974), when her husband left the house to serve his country as a reservist soldier. The last time she saw him was – as she mentioned – the evening of 24 July 1974, after the first stage of the invasion; he wore a red shirt, his watch and his cross, which she herself had pinned on his shirt the day he left the house. After the second stage of the invasion, more specifically around September 1974, the relevant authorities informed her that her husband had disappeared from the Ayios Pavlos area at the Outpost "Palloukia" and was presumed missing. Thenceforth commenced an arduous but

persistent quest for her husband, since no person in charge could provide information regarding his fate. All her attempts were fruitless. She faced denial and cruelty from persons in charge and not. In addition to this, she had to face a life without her husband, with three underage children, which she dragged to various demonstrations organised both in Cyprus and abroad to raise awareness about the question of missing persons and to demand that their fate be investigated. She was never told that her husband was or might be dead (initially the Battalion's Commander Mr Alevromagiras had said to her that if Palmas had been captured by the Turks after 1 p.m. on 16 August 1974, then he would be a prisoner), and no one from the missing persons service or the various government services mentioned to her that there were unknown dead soldiers buried in Lakatamia. Twenty years later, in 1994, she heard rumours that further testimonies had been taken by the services of the Cyprus Republic, which had re-examined the question of missing persons; she eventually unofficially heard, from Police Officer Christakis Efstathiou, who dealt with issues relating to missing persons, that her husband was presumed dead.

Nothing changed during cross-examination, despite the harsh and unnecessary attempt to suggest to her that she had been given convincing materials indicating that her husband was dead and that even if she had been informed of the testimonies of 1974 and 1975, these would have been inadequate to convince her of his death.

Plaintiff 2, Kalliopi Palma (PW2) was 5-6 years old in 1974, when she saw her father for the last time, before he left to defend his homeland. In her testimony, she described the difficulty she had adjusting to and accepting the fact and implications of her father being a missing person. It was something she had to face almost daily, both at school and in society. She explained that she herself however, along with her family, kept the hope alive that her father, as someone who was missing but not dead, would return.

The fact that she was affected by the entire affair was clear in her testimony. As she described, during that period she was characterized by introversion, reaction and feelings of anger, to the point where she had to be monitored by a psychologist. She also described the desperate condition her mother, Plaintiff 1, was in, and the effect this condition had on her emotional well-being. She always took part, alongside her mother, in demonstrations for missing persons. She often had to deal with the fact that her mother lost consciousness in these demonstrations.

As she explained, she dealt not only with her father's absence, but also her mother's. She mentioned that when her mother shared the information from Efstathiou concerning her father's death, she was angry that she had been told in the car. They invited Efstathiou round to their home to discuss matters, and Efstathiou said that he had wanted to tell them but had not been permitted to do so and he told them that documents existed. Ever since that moment, as plaintiff 2 says, as the state would not formally inform them, they left no stone unturned in their quest to find out.

She gave evidence for their own struggle to determine her father's fate after Efstathiou's information. She mentioned the difficulties and contacts she had with Christodoulou and Mavris Georgios in March 1998, who had changed his name and had moved to Athens. Through her testimony, we saw that Mavris Georgios was initially hesitant and avoided them, but later spoke to them. PW2 described what Mavris had told them. The latter recognised the faces in the photographs PW2 showed him, and told them that he had been present at the collection, along with an English and a Greek officer who had marked out the area, from which her dead father had also been collected. Mavris said that her father's body had been transported to Lakatamia and that he had testified and they ought to have told them.

PW2 understandably questioned, in her testimony, how could she have found this testimony after all these years, whilst the State had not. Plaintiff 2 described the day they were told, 26 whole years after the Cyprus Government had buried Charalambos Palmas as unknown in Lakatamia Cemetery, that they could receive his remains. There she encountered her father's bones, together with his personal effects, that had been buried with his body. When asked about her emotions, she said that they felt like third-class citizens and that what hurts her was that the State monitored both their psychological and financial situation and knew that they were growing up feeling humiliated.

During cross-examination, it was suggested to PW2 that even if she had known that her father was dead, she would have experienced the same emotions. She denied this and explained that it would not have been the same as she would have had a grave for her father and her mother beside her and would have felt safer. It was also suggested to PW2 that her father, whether missing or dead, would not have been around anyway, and so the situation was no different. Plaintiff 2 explained once more that her reasoning and psychology would have been different.

Moreover, she was asked during cross-examination why they insisted, after the investigation (in the beginning of the 1990 decade) of the file, on keeping her father's name on the list of missing persons, she replied that they did this in case the remains were not identified. She mentions that after all the deception they had encountered, after so many years of being told otherwise, they would not be convinced of his death until his remains were identified. Nothing changed in cross-examination despite the harsh and untimely attempt to suggest to her that there was no difference between having a missing father or a dead one.

Plaintiff 3 – PW3 Christina Palma was two and a half years old in 1974. Because of her young age, she has no recollection of her father, but testifies that insecurity and anxiety pervaded her childhood. She mentioned that the hope that her father would be found grew constantly and so when she learned that he was dead it was the end of her world as she knew it. Upon hearing that he was dead, her childhood dreams that she would have her father back at some point and feel his arms around her were shattered. She also felt anger when she realised that her father had been buried in Lakatamia, where she had been living, and that she had not had the right to visit his grave to talk to him, to cry over him. When asked about her emotions after the burial, she said she had calmed down, but inside her the whys were still screaming. It is evident from her testimony how affected she was by the entire situation. Plaintiff 3 could never live like a normal child, since she went from one demonstration to the next with her mother and sister. Insecurity and anxiety had become an inextricable part of her life.

PW4 Makarios Droushiotis, is a reporter who has dealt with, *inter alia*, the question of missing persons. He has conducted a lengthy investigation which he published in newspapers. The result of this investigation was the publication of a book, "Politics and Diplomacy" a copy of which was produced as Exhibit 31.

PW4 explained that he felt compelled to write about Mrs Palma on pp.76-78 of Exhibit 31 after meeting her. He mentioned that between 1977 and 2000 he dealt extensively with the question of missing persons and was in contact with Plaintiff 1, who was desperately trying to discover what had happened to her husband.

On p.76, under the title "Forgotten for 25 years" the following is recorded:

“These people, who fought and fell on the battlefield, were buried like dogs in mass graves and remained there for 25 whole years. Despite information that existed since 1974, the state made no serious attempt to identify them and to notify their families. Instead of recognising their sacrifice and contribution, it included their names in the list of missing persons, thus deceiving their families and submerging them in pain and misery.”

On p.78, testimony from Plaintiff 1 is recorded, as she describes how different her life would have been. The following is an excerpt:

“We were used...”

Palma’s adventure scarred her entire life, as well as her children’s. ‘My life would have been different had I known then that my husband was dead. It is one thing being the wife of a dead man, and another being the wife of a missing man. I was then 27 years old. I could have married someone who could have supported my children. I would have honoured my husband’s memory, but my life would have changed. With the course matters took, my own life was a constant tragedy. I unavoidably passed this tragedy on to my children...’”

PW4 also referred to the difficulties he ran into from the Republic’s Authorities concerning the publication of the list of missing persons. The list remained unseen. PW4 submitted an application to the Ombudsman, who did not however have jurisdiction. Exhibit 32 contains the publication of 10.07.2000 in the Official Gazette of the Republic of the List of Missing Persons (26 whole years after the Turkish Invasion).

In PW4’s opinion, the question of missing persons since 1974 until the change in policy in 2000, had been dealt with in a propagandistic manner by the governments – that is, that these people were alive somewhere in Turkey, thus raising relatives’ expectations, who kept and wanted to keep their hopes alive. He specifically mentions that there was no case-by-case investigation, which ought to have focused on instances where the other side was responsible. There was no separation as he mentioned – and the families were the victims. He was asked if this referred to what he had described on p.6 of Exhibit 31 – i.e. that the question of missing persons had been mishandled by the Service of Missing Persons – and PW4 replied “Exactly that”. It is specifically stated in the said excerpt that the number and names of missing persons did not reflect the reality and that this was the reason that the list of Missing Persons remained classified until

2000. On p.7 of Exhibit 31, references are made to serious mistakes and omissions by the state, and when asked, the witness gave the examples of the mass burials of victims without recording their details. Indeed he also mentioned that even if their actions had been hasty in the midst of all the chaos and the heat, a serious state should have gone back and individually investigated each case. The witness mentioned, moreover, the Greek Cypriot side's initial reluctance to file details with the CMP and that only when the situation had reached a breaking point was an intensive effort made, when it was discovered that most files were empty, or contained wrong names, or wrong details.

The witness noted that due to the fact that the competent authorities had not exhausted all the possible methods of locating the missing persons, they had also condemned the wives of the fallen to a lifetime of social exclusion, as it was taboo for a missing person's wife to remarry.

After the witness was referred to p.27 of Exhibit 31, which cited Yiannakis Kasoulides' – the then Minister of Foreign Affairs – speech, concerning the decision to make the list of Missing Persons public in 2000, and to p.28, where he questions the reasons for which the list was kept classified for so many years, PW4 commented that the number of 1619 missing persons was a symbol. Having personally looked through lists, the witness discovered that the lists differed but that the number of missing persons was always the same: 1619. Such examples are also cited in Exhibit 31. As a further indication of this problem, the witness mentions the fact that the final list comprised of 1493 missing persons.

It is worth noting that Charalambos Palmas was not amongst the 1493.

Referring to p.37 of Exhibit 31, the witness informed the Court of the conflict between the Service of Missing Persons and the former Presidential Commissioner for Humanitarian Affairs Leandros Zachariades, who repeatedly stated that if there had been a detailed investigation and appraisal of all the information available, the files in 1995 would not have been so incomplete. When it was suggested to PW4 that his reference on p.78 of the book to the deception of the families of the missing was a strong word to use, he explained that since the State was aware that some persons had been buried in areas under its control, and could have notified families, by not disseminating such information it operated in a propagandistic manner at the expense of human suffering.

On pp.113 and 114 of Exhibit 31, the witness refers to the collection in August 1974 and the agreement between Greek and Turkish officers for the exchange of dead soldiers. The witness explained to the Court that he had come by this information from Mr Flynn, the then United Nations commander in Nicosia. He states:

“The dead were soldiers from ELDYK as well as the National Guard and were buried in Lakatamia cemetery with no attempt at identifying them, with no funeral and no honours. They had been declared missing since then and their families had been seeking them in Turkish prisons.

Leading the collection operation was a certain Major Tsaousis, who, Flynn mentions in his report, refused to enter with his soldiers in the area where the collection was being conducted and characterised this act as a ‘shame to his army’. Tsaousis was later located by the Greek Foreign Ministry and gave evidence, rejecting Flynn’s allegations concerning his own conduct.

The fallen ELDYK soldiers in Ayios Pavlos were later found buried in mass graves in Lakatamia cemetery, when in two cases, in 1979 and 1981, the Greek army exhumed the remains of those who had been killed during the invasion in order to transport them to Greece for burial. Personal effects found near the bodies (identity cards, photographs, documents, etc) were used to identify 21 bodies. The remains were placed in Tymvos Makedonitissas Ossuary, along with the remains of another 34 unknown persons.

The witness was also asked about his knowledge concerning the exhumations that he mentions, and he then described a macabre scenario in which, because of the amateurish manner in which the exhumations were conducted, the remains that were transported to Greece were incorrectly put together and that “heads were found here, legs were found there”.

PW4 was moreover asked about what he had written in the last paragraph on p.122 of Exhibit 31, about the State pleading with him to hush up the results of his investigation for public interest reasons. He replied with the phrase he had used in his book – that, as Solomos said, “What serves the Nation is what is true”.

During cross-examination, the Republic tried to cast doubt on the reliability of his investigation, but without any success. It is also worth noting that during this attempt, it was put to the witness

that Mr Lingis' testimony, which he refers to in his book, does not exist, as it is not in the file. PW4 replied that he wouldn't be at all surprised if Mr Lingis had testified, but his testimony had gone missing or had been thrown away. The truth of the existence of such testimony was made evident in due course, when Mr Lingis was presented and gave evidence as PW7, following an investigation by the Plaintiffs.

PW5 Xenophon Kallis is the main competent authority in the Government for dealing with missing persons issues. He has been the Adviser to the Greek Cypriot Representative to the CMP since 1989 and is now the head of the Service of Missing Persons.

He referred to the first exhumation he was involved with in 1998, when he flew to Geneva following instructions from the Ministry of Foreign Affairs in order to negotiate with the Red Cross the issue of starting the identification and exhumation process of the remains. He also noted that the Council of Ministers appointed him the proponent for the list of those who fell during the Turkish Invasion, as there was no such document until 2000.

When asked about the involvement of the Ministry of Foreign Affairs, the witness confirmed that there had been information concerning the dead who had been buried in the free areas from the very start, explaining that this proved to be the cause of multiple problems and much criticism aimed at the State in regard to the handling of the issue of missing persons. He also noted that these cases included the dead of Lakatamia Cemetery.

He also confirmed to the Court the existence of crosses with the word "unknown". As he mentioned, he himself had known about these persons since 1980 and had informed the relevant authorities. In his assessment someone had placed those crosses and someone had paid for them, therefore someone had known. He presented the study he had prepared on Lakatamia Cemetery in 1999 which was marked as Exhibit 33, which contained photographs of the graves (from 1998-99) and which was given to a relevant Government department. He mentions that an investigation was launched in 1993 following pressure from the CMP to file all cases. Only 1493 cases were filed in the end. The remaining files were examined by the Law Office of the Republic.

An important point in his testimony is the confirmation that, until then, the Republic did not permit families to access the files of their missing kin.

PW5 identified Exhibit 29, which is a note from Char. Sivakka of the Service of Missing Persons, dated 26 November 1992, which was marked "Top Secret" and concludes that the ELDYK soldiers from Ayios Pavlos who went missing during the second stage of the invasion "must be sought in Lakatamia cemetery where they had evidently been buried as 'unknown'". With regard to the exhumations between 1979-1981, the witness said that the exhumations were conducted in an unorthodox manner and that this was discovered when the exhumations in 1999 went ahead. He further mentioned that following arrangements with the Ministry of Defence they received the Greeks' bones which, as PW5 describes, were mixed up. Most tragically, they were sprayed with an unknown chemical substance that rendered the bones unidentifiable to the present day.

Exhibit 23 – a plan of the area in which Palmas was buried – was shown to the witness, and he recognised it as such. He was also asked when he had seen Mrs Palma and he stated that this had taken place before the exhumations. He also stated that whilst the files that were to be submitted to the CMP were being prepared, the Commissioner instructed him to be present when the Palmas family was informed. He was asked when, and he replied the 6.11.1996, but mentioned he had not taken part in the end. This confirms Plaintiff 1's attestation as to when she was first officially informed by the relevant authorities. PW5 was also asked about the collection agreement between Turkey-Greece and the UN. He mentioned a Liaison Officer – of the GEEF and the UN and the evidence of one major Tsoulos. He finally said that the Collection/Exchange Protocol had not been traced. He also confirmed the failure to collect any personal effects belonging to the fallen during the burials in 1974. He said that many personal effects were found later, during the exhumations, such as wedding bands with names, crosses, etc. As he further stated, these findings made it clear that there had been no methodical effort, or indeed, in some cases, no effort at all to examine the bodies with a view to identifying them.

Exhibit 33 unequivocally proves that during 1979-1981 ELDYK proceeded to exhume both named and unnamed Greek ELDYK soldiers, but it is not known or clarified under whose authority and why the exhumation had been limited then to ELDYK soldiers and had not been extended to the G/C dead soldiers of the National Guard. Also unknown is why or, indeed, whether ELDYK collaborated with GEEF to conduct these exhumations.

PW6 Savvas Ellinas is a Lieutenant Colonel, serving in the GEEF/Personnel Management and is the person who was authorised to testify after A/GEEF was summoned by the Plaintiffs. His evidence took the form of a statement along with additional documents kept in his service's archive, which constitute exhibits, and which were presented by the witness during his statement. PW6 presented Exhibit 36, the findings from an investigation in 1974, which also concerned Charalambos Palmas. As mentioned, the soldiers of 336IB went missing "under circumstances which make their death probable".

PW6 was asked whether the GEEF was in possession of the statements, summaries of which can be found in Exhibit 36. He mentioned that he looked for them but could not find them. He presented and explained the system in place for collecting bodies in 1974. This was presented as Exhibit 37. It is evident that a system existed and was functional. Therefore, one must ask what went wrong in this particular instance.

PW6 referred to Captain Papahantzopoulos Georgios' testimony in Exhibit 36, where the collection of dead bodies by an GEEF crew is mentioned. He mentioned, in addition, that many dead bodies were buried as "unknown" because their identification was not possible, either because of the bodies' condition or because there were insufficient materials on them. He presented 43 (he mentioned 45) burial certificates of unknown dead in relation to this.

It is pertinent here to note that although Identification Certificates of dead persons require, *inter alia*, the location at which the body was found and photographic evidence, as well as a description of physical characteristics, there are no such details included in any of the submitted documentation. At this point I should refer to p.72 of Exhibit 31 (PW4 Makarios Droushiotis' book), where the commander of the Civil Defence in the Nicosia district, Christos Eliofotou, gives his evidence concerning the mass burial of bodies during the invasion, without the identification or the securing of the necessary evidence. Mr Eliofotou mentions, in particular, that when he was asked to transport bodies for burial from the Gen. Hospital, he refused because he did not have any information concerning the dead and stated that he would return the next day with a photographer from the Press Information Office. The next day, as he states, when he went to the hospital to collect the bodies, he was informed that the bodies had been buried by the army. It is evident that the collection and burial of the dead had taken place without following the correct procedures, without identification and/or without even making a rudimentary effort to identify them, and subsequently burying them in a mass grave.

PW6 also testified that the existence of unknown dead in Lakatamia Military Cemetery was a known fact. He based this on the fact that the parish priest Papandreas Christoforou was present at all the burials, and testified to this effect before the Committee of Missing Persons, as well as the fact that the indication “UNKNOWN DEAD” on a number of tombstones was within sight of any visitor. The witness also mentions the exhumation of Greek remains in the period 1979-1981, some of which were transported to Greece and some of which were deposited in Tymvos Makedonitissas Ossuary and he produced Exhibits – 39, 40 and 41 accordingly.

On Exhibit 39 one can notice that a letter dated 20.09.1980 and classified “Top Secret” was sent from the GEEF, under the reference Exhumation of Bones, which was copied to the Ministry of Defence. In this letter, the GEEF suggests assigning the project of exhuming the remaining bones to ELDYK, which was to complete the transportation. The above testimony proves that the Republic had, at the very least, knowledge of the exhumations in 1979-1981, and that a procedure was in place for collection and identifying the dead, which, however, for reasons that the Republic did not explain, was not followed in this particular instance. The witness tried to explain that the reasons some bodies would be buried without being identified included advanced decomposition or the absence of personal effects. However, from later testimony it transpires that these reasons did not apply in the case of Charalambos Palmas.

Loukas Lingis, PW7, (a material witness) was twenty years old in 1974 and served as a Reservist soldier in the 336 Reserve Battalion. During the second stage of the invasion he was serving in the Ayios Pavlos outpost “Palloukia”. There the witness met Charalambos Palmas.

PW7 described the dramatic moments he experienced between 14 and 17 August 1974. He described in detail the fierce battle waged in the area between Wednesday and Friday, 14-16 August 1974, and mentioned in particular that the fighting was harsh on Thursday and Friday. He explains that some soldiers, himself included, had retreated from the outpost and occupied some houses in Ayios Pavlos. Six of our own however, he mentions, had stayed behind at “Palloukia”. They knew they were alive after seeing a white flag flying over the emplacement. Around 7.00-7.30 in the afternoon on Friday, as night was falling, they heard gunshots and realised that the Turks had killed their men at “Palloukia”. Amongst them was Charalambos Palmas. He mentioned what Kyriakos Attas, a soldier who had managed to return with Christodoulou one or two days later, had confirmed: that there were 6 soldiers at the outpost,

whom they watched as they surrendered and were executed. The witness mentioned that the next morning he saw a military vehicle return to collect the bodies from the outpost.

Mr Lingis also mentioned that before being discharged, he attended a memorial service around July or August 1975, for those killed at Ayios Pavlos. However, to his surprise, the names of their own men from the "Palloukia" outpost were not amongst those being honoured. He himself strongly protested and the next day he was called to the Second Office of the 211th Infantry Battalion, where he gave a statement, saying that he knew that 6 soldiers, including Charalambos Palmas, had been killed at "Palloukia".

The witness mentioned, furthermore, that around the year 1990, after hearing Mrs Palma being presented on a programme as a missing person's wife, he got in touch with the Service of Missing Persons. He gave evidence to a CID Officer, to whom he specifically mentioned that he had given testimony before, and also handed in his notebook. This notebook was presented to the Court and a copy was marked as Exhibit 44. It contains his notes on the events of the second invasion. In particular, he notes the names of the dead on p.13, amongst which was Charalambos Palmas, with a specific date of death: 16 August 1974.

Even more importantly, during his cross-examination the Republic presented the multiple-page testimony that the witness had given to a CID Officer (Exhibit 45) in 1992, where he repeated the names of those killed, including Charalambos Palmas', and also gave in a copy of his notebook (Exhibit 44). By doing this, the Republic proved once again that it had attempted to conceal evidence, or at the very least the inconsistencies covering its conduct. It cannot, during the cross-examination of PW4 (Makarios Droushiotis) deny the statement, and during the cross examination of PW7 to present same. In addition, let it be noted that based on PW7's evidence, a copy of Mr Lingis' notebook and previous testimony (1975) ought to have been included in the file and produced; however, none of this was revealed. The witness's testimony to the CID Exhibit 45, wholly confirms his declaration in court. In fact, it includes further details concerning the collection that took place on 17.8.1974 around 09.00 by a L/R of the N.G. and a U.N. car.

Furthermore, during cross-examination, the Republic's advocate attempted to argue that the witness was merely passing on what he had heard from Attas and Christodoulou. In support of this she presented Attas' testimony as Exhibit for identification B. However, upon carefully reading PW7's Declaration, it is clear that everything he witnessed allowed him to claim

personal knowledge of the facts, and that Attas and Christodoulou had merely confirmed everything he had already concluded.

In Makarios Droushiotis' (PW4) cross examination, Lingis' name was mentioned for the first time, which implies that the Republic knew of Lingis' testimony and had deprived the Plaintiffs of the right to be informed of the fate of their kin. The witness's testimony to the CID and the copy of his notebook were not included in the file that was given to the family. This raises a reasonable question as to whether there are further documents that were not included in the file, or that the family was not allowed to have access to?

PW8, Thrasyvoulos Vamvakopoulos, is a military Judge and serves in ELDYK as legal counsel. He appeared on behalf of ELDYK's Commander Mr Kevenzides, who had been summoned. The witness stated that a record of all of ELDYK's military operations during the war period was kept. This, he noted, must have been transferred to the Greek Ministry of Foreign Affairs as a result of an order, along with a file containing other documents pertaining to the file of Cyprus.

He was asked about the exhumations that took place in 1979-1981 and replied that he knew they had taken place, but that he did not know any details, as ELDYK has not had a record at its disposal since 1989, and that all he knows is the names of those killed that are visible at Tymvos Makedonitissas Ossuary. The witness was asked about the extent of his knowledge regarding the existence of any ELDYK protocols and agreements concerning the exhumations, and he speculates that they definitely exist and must also be located in Greece. He agreed to look into the matter of the documents kept in Greece, by applying to the staff office of GES to send over the relevant evidence and indicatively the following documents:

- (a) War diary for 15, 16, 17.8.1974 and information relating to the agreement for the collection of the bodies
- (b) Copies of the Certificates for the Transfer of the Dead
- (c) Copies of the Protocols of exhumation between 1979-1981

ELDYK filed this application with GES, but the GES did not approve the forwarding of the particular documents.

The most harrowing account was given to the court by Vasos Athanasiou (PW9). He is the father of the fallen Panayiotis Athanasiou, who had fought in 1974 at the Ayios Pavlos outpost where Charalambos Palmas had also fought.

PW9 described his visit on 17 August 1974 to the place where his soldier son had fought. When he had pressed the only Officer there, he found out that some dead soldiers had been taken to Lakatamia cemetery for burial. The witness procured an identification document from the Officer and went to the Cemetery. He described the difficulties he encountered when trying to enter the Cemetery; however, upon entering, he was accompanied by a Police Officer to the burial site. He described the manner in which the burials were being conducted – in particular, how the persons in charge were dropping the dead soldiers in mass graves, with blankets in a line.

A very important element of his testimony is the description of the moment the witness recognised his dead son in the collection car. He asked the persons in charge whether he could take him away, but they refused, claiming that he had not been identified yet. So PW9 placed a rough wooden cross to mark the burial site. After 15-20 days he went back with some relatives and the village priest to conduct a memorial service. He described how, when they returned to the cemetery, the cross he had placed on the grave had been removed, and in its place was a tombstone with the word “Unknown”. As he noted, there were many other such tombstones.

When the witness was asked about the condition in which he had found his son, he said that the condition his son was in was identifiable, that he was clear, and that the other dead soldiers were in a similarly good condition. Another important detail in the witness’s testimony is the fact that whilst he had easily identified his dead son, the state persisted in telling him that his son was missing.

PW10 Soula Hadjikyriakou is a reporter and author of the documentary “Antigone’s Word”, which concerns 3 missing persons’ wives who had lost their husbands in August 1974. One of these is Mrs Andriani Palma. The witness presented this documentary, which was marked as Exhibit 46. She explained that the material that was presented in the documentary is real, as it stems from real accounts. A common point of reference for all three women was that during their mission to discover their husbands’ fates they went to the Cemetery and dug to find their own people.

The witness stated that whilst the issue of missing persons is considered humanitarian, the manner it was dealt with was inhuman. More specifically, the witness asked herself: "Okay, I can understand the chaos during those days. But what about six months later? Two years?"

During evidence in chief, she characterised Mrs Kyprianidou (one of the three women who had searched for their husbands in Nicosia cemetery) as lucky, since she had found her husband, had re-married, and was serene. In contrast, she stated, other family members of missing persons she had met had been traumatised, as their situation had been in limbo for a much longer period.

An important piece of evidence that the witness gave both during her testimony and in her documentary was the fact that one of these three women, Angeliki Kyprianidou, recognised her husband one month after the war. Despite the fact that the body was almost decomposed, Mrs Kyprianidou could and did identify him from the wallet that contained his identity card and the Army travel documents, but also from a mark the dead soldier had on his leg. In the testimony she gave in the documentary, Mrs Kyprianidou mentioned that after finding her husband, she went to Alevromagiras with the evidence she had found and asked why they had been buried with so many personal effects. Despite the fact that her husband had been buried with so much convincing evidence around him, the State officially informed her of his death 27 years later. It is important to the case to note that, whilst digging, Mrs Kyprianidou had found the belongings of a certain Chrysostomos Miltiadous who had had his identity card on him and a photograph of his children.

The witness also presented Mrs Siamishi's story. In particular, she states that when Mrs Siamishi went to Alevromagiras for new information concerning her husband, she had been told that he couldn't do anything, as her husband, along with everyone else in the area, was missing.

Mrs Siamishi mentioned in the documentary that she first went to the Cemetery to dig about a month after the second stage of the invasion, after she had received unofficial information. She had been told to show the point until which the Ayios Pavlos soldiers were buried, after which the Kalamarades were buried. She mentions that the condition of the dead bodies was recognisable to such an extent that you thought they could speak to you. Mrs Siamishi worked at the hospital and knew that they had been collected and taken directly to the cemetery without going through the mortuary.

Despite not having found her husband on either of the two occasions she went to the Cemetery to dig, evidence was produced that showed that evidence to this effect had been discovered by the Government, as parts of Siamishi's body had probably been mistakenly transferred to Greece in 1981, after exhumations. As was further explained during the cross-examination of PW10 (Soula Hadjikyriakou), Mrs Siamishi's husband appeared to have been buried on the border between Greek and Cypriot fallen. Mrs Siamishi plaintively asks in the documentary "Why did they wait for us to pick up a shovel and dig? Why didn't they exhume them?"

In the documentary, Mrs Palma once again expresses her grievances about the truth being kept from her, about not being allowed to have a grave in Peristerona (her village) to mourn him, about having her life stolen from her. Mrs Palma concludes: "They may have taken the knife out, but the wounds remained."

During cross-examination, the witness was asked if she had checked her information, if she was searching for answers to the questions that had arisen. The witness referred to Andreas Savvas in particular, who was in charge of Lakatamia cemetery, and who had confirmed that a truckload of bodies had arrived, and that they had not searched for identification because they assumed that the identification had taken place on the battlefield. She also mentioned that she had got in touch with Mr Serghides and Mr Matsoukaris but there they were not inclined to cooperate.

B. DEFENDANT'S EVIDENCE

DW1 has worked at the Service of Missing Persons since 1978, first as a Clerk, and then since 1980 as a secretary in the Archives, where he continues to work in charge of the Archives. He told the Court that a file exists for every missing person, and that there are other files for correspondence. According to DW1, these documents are considered confidential by their very nature. He explained that each file contained a testimony from the family, relevant testimonies and reports, press publications and the history of the case. DW1 presented two files relating to Charalambos Palmas. The first was presented as Exhibit 47 and was labelled "File for Determination of Fate", and the second, Exhibit 48, was labelled "Ante Mortem" and contained details of relatives and genetic material in case his bones were ever found and identified.

During cross-examination, Exhibit 33 – that is, the Book for Lakatamia Cemetery – was presented to the witness. The witness did not have any recollection of this book, given that it

was not, as he stated, in his archives. The witness was further asked whether any correspondence with the government was contained in the file, but required further clarification before responding. Subsequently he clarified that the content of the file is a matter for his superiors and that the employees working at the archive are only responsible for archiving.

The witness was then asked about the note TAE317 in the file, and he explained that it was the list kept by the Criminal Investigation Department concerning missing persons. He was asked if he could locate the list in question in the file, but this was not possible. He said the same about note GEEF 446, that it had to do with the list for missing persons kept by the GEEF. Subsequently the witness was asked to confirm that any relevant correspondence with the CMP would be in the file, and he did so. No such correspondence was found in the file.

When the witness was asked whether this file was shown to the family, he replied that he did not know. Given the above, it was suggested to the witness that there was further correspondence that was not contained in the file, but he was unable to answer for sure.

When it was also suggested to him that the family was not granted access to the files, the witness expressed surprise, saying that during the last five or six years that he has been in charge, he himself has given files to families.

Afterwards, when DW1 was persistently asked about documents that were classified as Secret, or documents relating to the exhumations, plans and teams of people who worked on such projects, he revealed that there was a separate file for the Lakatamia cemetery exhumations.

The witness was asked to present a file relating to the ELDYK exhumations, the Lakatamia cemetery exhumations and the general file of missing persons where they kept conference minutes, if and when Palmas' case had been discussed, the CID and GEEF list. The case was adjourned and at the next hearing DW1 presented the GEEF list of missing persons which were presented as Exhibits 49 and 50. With regard to the remaining files that were requested, the witness stated that the files existed but that he did not have relevant instructions from his Superior or the Attorney General.

Following the above, a question of the equality of arms was raised, as the Law Office of the Republic had, through its conduct of hiding material facts during the trial, violated the right to a

fair trial. The Republic defended its stance based on procedural arguments, failing to note however that these issues were directly related to the credibility of the witness, and primarily had to do with the Republic's entire stance during the investigation into the fate of missing persons, including Palmas. It has not escaped me that the two files that were presented to the court were incomplete; nor have I overlooked the fact that DW1 was an incompetent witness, being hired in 1978 initially as a secretary in the Service for Missing Persons, then as a clerk and now the Archive Manager. He failed to convince the court of either the fact that he had informed the Plaintiffs of the contents of the missing persons' file during the critical period or of the completeness of the file's content.

During the entire cross-examination, DW1 was at various times uncomfortable, appeared to be inconsistent, and answered vaguely or hypothetically. The reason is obviously his ignorance. Nevertheless, the conclusion in this case is not in favour of the defendant Republic, as it manifests, at the very least, poor upkeep of the archive of missing persons and/or the negligent fulfilment of its obligation to keep correct and organised files with complete details and unfettered access for the families – worst of all was the attempt to conceal relevant evidence. In its attempt to do so the Republic even sent a clerk, whom they styled "Archive Manager", to testify in such an important matter.

It ought to be noted that Pamboris' testimony in Exhibit 49, dated 06.06.1975, was not included in the Republic's pleadings, despite being crucial evidence as it mentions that Palmas "should be considered dead and buried in Lakatamia".

It is worth mentioning that a confidential note from the President of the Committee of Missing Persons' Relatives to the President of the Republic, dated 28.09.1995, that is marked as no.151 in the file, mentions that after reviewing some missing persons' files, they had confirmed that there was clear evidence regarding the death and burial in 77 instances, which included Charalambos Palmas. These instances differ greatly from many other testimonies which are only based on hearsay evidence. Subsequently, the State's duty to point out the exact location of burial to the relatives is clear. The question that once again arises is: why did so many years pass by after 1974-1995, before these files were searched and conclusions drawn that could have easily, based on the contents of these files, been drawn much earlier?

DW2 Marios Kariolou works at the Institute of Neurology and Genetics and is the director of the Cardiovascular Genetics Department and Laboratory of Forensic Genetics, where he deals with the identification of organic samples. He has submitted his qualifications in a short Curriculum Vitae.

The witness presented the background to the identification of genetic material from human bones, which started in 1944. In 1985 DNA fingerprinting was introduced, was first used in forensic science in 1987 and subsequently utilised in 1993 to identify missing US Soldiers from Vietnam and other places. He noted that the setting up of a laboratory in Cyprus began in 1995 and 1996, with a view to starting identifications, and that the compilation of a bank of genetic material began.

DW2 was asked about the accuracy of this method, and he explained the use of two terms: accuracy and certainty. Accuracy exists when a method is very accurate, i.e. 100%. Identification is possible when some degree of certainty has been achieved through factors such as: (1) the quality of genetic material that was isolated from a skeletal sample, (2) the existence of samples to be compared with the isolated material, and (3) how common or rare the genetic characteristics are. When 99.95% certainty or more is achieved, then the person is considered to have been identified.

He mentioned that the first identifications in Cyprus took place in 1999, by PHR under the direction of Hugland from exhumations from the St Constantine and St Helena Cemetery, as well as Lakatamia and genetic material that was stored at Tymvos. DW2 explained that it was very important to have a complete bank of genetic material in order to start identifications, and explained the process of its compilation. He also mentioned that the so-called reference samples, e.g. the missing person's toothbrush, could be used as samples.

DW2 subsequently explained that the 99.95% percentage is the percentage of certainty needed to announce the identification to a relative. However, he mentioned that other materials like dental records, X-rays and other data like bone additions were also important, as they could raise the percentage of certainty in instances of lower percentages. He also mentioned simple information that could be used, for example that the particular person was collected from a location and buried someplace else, personal effects, etc.

It is worth noting that that on p.19 of Exhibit 48, in the Data Recording Form relating to Charalambos Palmas' identification, and more specifically on p.15, family members had provided details concerning Palmas' broken right elbow, which he had had an operation on at Larnaca Hospital. They also mentioned that Palmas had fillings, and the name of his dentist at the General Hospital of Nicosia was recorded.

He described the way the identification process was organised and functioned in cooperation with a team of archaeologists and anthropologists. Without having taken part in these himself, he referred to the 1979-1981 exhumations and mentioned that the wrong remains had been given to several families of Greek soldiers. DW2 was asked whether he had further knowledge of these exhumations and on whose orders they had taken place. He did not know anything, and let it be noted here that all the evidence presented at this hearing has established the fact that the exhumations in 1979-1981 were not conducted in a specialised manner, and were conducted under circumstances of which we do not have full disclosure of materials and transparency; the Republic is once again responsible for this, Lakatamia cemetery being under its jurisdiction and control. He also mentioned that there was tremendous damage inflicted on the Tymvos Makedonitissas Ossuary as a result of the chemicals sprayed onto the bones which were under the supervision of the GEEF.

From the above we can surmise that even the most advanced identification method using DNA, may in certain instances demand the collection of simple information and other data; furthermore, that the use of DNA identification has been present in Forensic science since 1987 and used in the identification of missing persons since 1993.

The witness's presentation on the DNA identification process was interesting, but in the circumstances of this case, given the body's identifiable state (see relevant evidence of CW9) at the time of burial and also the existence of alternative identification methods that were available before DNA, as was evident from the entire testimony, the current testimony cannot stand as a defence for the Republic's failure to take all due and reasonable measures for the determination of Palmas' fate.

It is important to emphasise, however, that DW2 confirmed that time is an important factor for the possibility of identification. This point is crucial in Palmas' case, as based on existing testimony Palmas was killed on the evening of 16.08.1974 and his body was collected on the

morning of 17.08.1974. Therefore, the time elapsed was such that Palmas was in a recognisable condition. This is in line with the testimony of PW9 (Vasos Athanasiou), who had recognised his son – Palmas' fellow soldier – and confirmed before the Court that his son, along with the other bodies, were in a wholly identifiable state.

DW3 Panos Stavrinos is a pathologist and lecturer in Pathology, who worked in the civil service in the years 1974-1989. From June 1974 onwards he worked as the director of the Pathology cellular department of the General Hospital of Nicosia. He explained that the conditions of the mortuary in 1974 before the invasion were satisfactory, with a cold chamber with temperatures up to 4°C to delay sepsis, and which could hold up to four bodies.

The witness referred to the transportation of bodies to the hospital during the period in question. He noted in particular that 15 corpses were transported to the mortuary on the first day of the Coup d'état, and another 20 from the invasion, one week later.

He said that during that period he could not conduct a proper post mortem examination and that he would ordinarily conduct a post mortem following instructions from a coroner or from the police, and that during the critical period, this was done under soldiers' supervision. The witness later said that the 15 above-mentioned bodies from the coup were identified and their names sent to the Law Office of the Republic.

In my opinion, it is important to note the witness's reference to the fact that this identification took place using only their identity cards and their personal effects. It is also important to note from his testimony that those collected from Ayios Pavlos were not transported to the hospital but to the cemetery for burial.

Additionally the witness mentioned an incident where the son of a well-known lady, who had come to the hospital to locate him, was later identified DESPITE the fact that the body was severely decomposed.

During evidence in chief DW3 noted that there were certain instances where he had had to sign death certificates without a post mortem examination. During cross-examination, when asked, he said that he had not signed under pressure, but was counting on the honesty and integrity of the pathologist. During cross-examination, DW3 described the autopsy process. As he

explained, he inspects the bodies and notes external findings and subsequently proceeds to the autopsy in the presence of an assistant pathologist, photographer and police investigator, aiming to establish the exact cause of death, after identifying the body. In addition he referred to the case of Ayios Tychonas where bodies had been exhumed for identification. During cross-examination, he explained that because of careless burial, the hand of one body had been discovered and so the exhumation had been ordered, and an autopsy and identification took place. During cross-examination, DW3 was also asked about the case of Dandoulakis and he explained that because the body was severely decomposed the identification had been done through clothing and fingerprints.

The witness emphasised the identification of a body from its fingerprints, photographs and personal effects such as clothes, watches, hair. In particular, he accepted that fingerprints were “gospel” for identification during the 1974 period.

In addition, when he was shown Exhibit 37 Certificate of Identification of the Dead and asked which of the details he considered to be most important, he pointed to the fingerprints, the photographs and the description of physical characteristics. However, no note or relevant details were recorded in relation to this. In addition, DW3 recognised his signature on nine Death Certificates that were presented to him from Exhibit 37 that he had signed without seeing the corpse and also pointed out that the documents in question are not the mortuary’s but GEEF’s. One must question once again the validity of such certificates and the negligence and carelessness that all the authorities showed under the circumstances. In addition, despite the authorities’ knowledge of this, there was denial or negligence over the period of many years; as a result, time meant the possibilities of rectifying the mistakes and identifying the dead with the identification methods available then grew weaker.

However, the existence of the Certificates in question indicate the existence and functioning of a system which for reasons unknown or reasons undisclosed in the present case did not function in the case of the soldiers killed at Ayios Pavlos. It should be noted that DW3 insisted that all the dead had to go through the mortuary because it is otherwise prohibited. However, the evidence does not show that this took place in the case of the dead soldiers collected from the “Palloukia” outpost in Ayios Pavlos – we do not, of course, know why.

The witness at certain moments during the process seemed imprecise and reserved in his answers. It is important to note however that he confirmed the existence of a system that worked reasonably well. There were identification certificates for the dead, the bodies were transferred to the mortuary and, as presented, a significant number of identifications was made possible through personal effects. He confirmed that on certain occasions during the critical period identifications took place, and even exhumations. One wonders why the system worked on such a selective basis.

The problem, and consequently the violation, is focused on the fact that the system worked selectively and in the case of Charalambos Palmas, the Republic chose NOT to fulfil its obligations to identify the body that was collected in a recognisable state, and which was buried in such an unacceptable and perfunctory manner.

DW3 also revealed that “gospel” for identifications back then were the fingerprints as, let it be noted, identity cards back then also contained their holder’s fingerprints. Given these facts, the Republic or any other competent authorities appear, inter alia, to have operated in a criminal manner, as they failed to transport the Ayios Pavlos dead initially to the hospital, and to record fingerprints, photographs, and personal effects, thus limiting the chances of identifying the fallen soldiers with the safest methods of identification of the time. The authorities had evidence and/or knew the names of the soldiers who were serving in every outpost. They were almost certain that they had been killed. They gave orders for the bodies of these men to be collected the day after they were killed, and yet failed at that initial stage to either identify them (a soldier from the collection crew, Savvas Karapashis, recognised all five), or to record material evidence that would have helped to identify them at a later stage, when the state of war was over.

DW4 Yiannos Prokopiou, a graduate of dentistry from the University of Athens, who today works as a dentist at Nicosia General Hospital, has had training in Radiology and Oral Diagnostics, as well as Forensics. He explained that dental evidence lies in the teeth, the jawbone and the kind of restoration material used in the mouth, and that identification from dental methods is, under certain circumstances, a very reliable method of identifying the dead. He noted that an important pre-requisite is the valid, complete and quality maintenance of ante-mortem records. He went on to explain that after the post-mortem records are created, the comparison takes place. For identification to take place, the information on a certain number of points must coincide. The number varies, and although the number of points usually required internationally is 12, identification can take place with fewer.

During his testimony, the witness commented on Palmas' dental history as recorded in the relevant document in Exhibit 48, pp.14-15. He said that there was no particular characteristic that stood out, and that the particular information did not fulfil the criteria of completeness, validity and quality of ante-mortem records. He subsequently referred to the case of the Helios plane crash, where in several instances, before DNA identification, identification had taken place using dental records that relatives had been called upon to provide.

It is now vital to distinguish this case, where not only was post-mortem dental information not recorded, but where ante-mortem dental records were not sought. Therefore the Republic cannot defend its failure to identify the victims with contemporary methods of identification, using the absence of complete ante-mortem records as its defence, as it never asked relatives to produce any relevant information, nor having conducted a relevant investigation in the Hospital's archives, which would have proved the absence of such information.

DW4 also referred to the methodology of comparing ante-mortem and post-mortem records and gave four possible results:

- (1) Identification
- (2) Possible identification
- (3) Impossibility of identification
- (4) Exclusion

DW4 maintained that every piece of information is important in the process of identification, and during cross-examination he confirmed the importance of collecting post-mortem information, and that without it, there is no possibility of identification. He also conceded that if a qualified person had information in relation to the initial location of the bodies, given that the soldiers were from that particular outpost, this would have facilitated the process of identification.

During cross-examination, the book "Modern Oral and Dental Diagnostics and Radiology" was presented as Exhibit 52. DW4 was shown page xi of the book's prologue, where it is mentioned that oral diagnostics was a subject taught at Athens University since 1974-1975. Because the witness had initially denied that he had been taught Forensics during his undergraduate degree,

he tried to explain that Forensics and Oral Diagnostics were different, but stated that it is taught in the context of Forensic Odontology.

The witness accepted a series of suggestions in relation to Exhibit 52, and did not dispute the content of the book. He also fully conceded the value of the book, as he recognised one of its authors as being an authority in the area of Oral Diagnostics.

He confirmed the correctness of the following reference on p.543 of Exhibit 52: “Since teeth have extremely unique and durable characteristics, and consistently constitute the second choice of material after fingerprints when identifying a body, and indeed that the greater the decomposition of soft tissue, the greater the interest is in using dental records to identify the body.” This statement is crucial when considering bodies that are in an advanced stage of decomposition. However, Palmas’ case does not fall within any of these categories.

DW4 also accepted the statement on p.544 of the same Exhibit, that even “a filling could potentially, because of its location, its morphology and the material that it has been made out of, constitute a satisfactory piece of information in identifying the body” and point 7 on p.547, where it mentions a tenet in Forensics: “no unidentified body should leave the mortuary, if the two jawbones have not been removed and stored in formalin”.

Subsequently, when presented with pages 14 and 13 from Exhibit 48, the witness confirmed that since there had been a reference to Palmas’ dentist, who was working at Nicosia General Hospital, the relevant authorities ought to have consulted the records kept there for further information that could have assisted in the identification process.

It is obvious that although the possibility of identifying bodies through dental records already existed in 1974 – a process that was, as explained, deemed crucial in the cases of bodies that were already severely decomposed, the Republic made no effort to secure the requisite ante-mortem and post-mortem information.

The Republic in this case knew who the soldiers at “Palloukia” were. It knew that they were “taken prisoner or killed on 16.08.1974”. On 17.08.1974 six known bodies were collected, which obviously belonged to the defenders of the “Palloukia” outpost, and were buried as unknown without being identified, but the Republic considered them to be missing and notified their families that they are missing. Who can explain the reason? Why did the Republic consider these men either missing or imprisoned and subsequently (even after the prisoners had

returned) continued to considered them missing and not killed, handed over to the Republic after their death, and buried in Lakatamia cemetery?

It should be noted that although in the present action the first stage of the Republic's responsibility lies in the fact that whilst Palmas, because of his particular circumstances, was recognisable, (as were his other known-unknown fellow soldiers at "Palloukia" outpost,) he was buried as unknown without being identified. It is self-evident on the facts that the Republic is liable for failing to collect this information that, using the methods available at the time, could have led to identification.

C. LEGAL ASPECT

PLAINTIFFS' ARGUMENTS

Having cited and noted the evidence before me, it is obvious that I accept the Plaintiffs' position and reject the Defendant's arguments as contradictory, untenable and misleading. I will attempt to explain my reasoning in this chapter.

It is the Plaintiffs' position that the acts and, more materially, the omissions of both the Government and the competent military and/or civil services for which the Republic is responsible constitute a violation of the Republic's obligations under the Constitution and/or International Conventions and/or the statutory duties of the Republic itself and its representatives and/or international customary humanitarian law, which resulted in the violation of the Plaintiffs' human rights.

As has already been mentioned, there are three pivotal moments in time in relation to this case:

(a) The war in August 1974 and the collection of bodies that was organised following an agreement between the United Nations in conjunction with the Turkish Army and the National Guard. This was done by the National Guard, by a unit which had been sent by the GEEF for this purpose, which appears to have collected these bodies and transported them directly to Lakatamia Military Cemetery (instead of going through Nicosia Hospital), where they were buried in mass graves. Some of these graves were marked "UNKNOWN" and indeed confirming this was CW6's testimony, who presented the system used by the GEEF in 1974 (Exhibit 37), as well as the Certificates of burial of the unknown dead.

(b) The exhumations that took place in Lakatamia Military Cemetery between 1979-1981. Although CW6 and CW8, namely from GEEF and ELDYK, were asked to present relevant evidence, insufficient evidence was presented, and it remains unclarified on whose authority and why the selective exhumation of only ELDYK soldiers took place and not of G/C fallen soldiers of the National Guard. However, the evidence of PW5, who presented Exhibit 33, is relevant, and confirmed that the exhumations were conducted in an unorthodox manner, with tragic consequences for the missing persons' families.

(c) The events of 1999-2000 in relation to the exhumation and DNA identification process of the body of Reservist Charalambos Palmas. This also lacks any convincing evidence from the Republic concerning the reasons for its delay and persistence in using the method in question despite the fact that there were alternative and adequately reliable methods.

The Plaintiffs' position is that the afore-mentioned events and the total failure of the Republic to examine the ONLY collection that took place in 1974 and to later take measures to identify Charalambos Palmas' body which, as it turned out, was known to have been buried in Lakatamia Military Cemetery since 1974, constitute breaches of duty and, consequently violations, of the Plaintiffs' Human Rights.

At this point I should cite the following findings of the Court in its judgment **Vasos Vasiliou and others v. Republic of Cyprus, Action No. 13863/2002, Nicosia District Court**, dated 5.11.2010, where issues of a similar nature were tried. The judgment in question is not final, as the Republic has lodged an appeal. The following is relevant:

"67. Savvas Karapashis collected six soldiers' bodies from the "Palloukia" outpost, five of whom he recognised (Yiannis Yianni, Andreas Zorpis, Demetris Evangelou, Andreas Palmas and Charalambos Palmas). As shown by Exhibit 35, despite being identified by Karpashis, these five dead soldiers had a 'missing persons' file.

147. The fact that during the collection of the dead in 1974 their personal effects were not collected and recorded, but were instead buried with the dead, made exhumations as quickly as possible after 1974 imperative, when there was still a reasonable chance of identifying at least some of the dead soldiers.

148. The Defendant knew that there were graves of unknown fallen soldiers at Lakatamia Military Cemetery. Until 1992, no serious attempt at identifying them had been made. In 1992, after a letter from PW4 X. Kallis, testimonies were taken after a delay of 18 years from people

who had taken part in the collection crews – those who could be located after all these years – and the report in Exhibit 35 was prepared, which reached the obvious conclusion that the soldiers killed at Ayios Pavlos ought to have been searched for in Lakatamia Cemetery, where they had been buried as unknown. The information that led to this conclusion had been available since 1974, had someone made the effort to record the testimonies of the people who had collected the dead. If in 1992, 18 years after the events, it had been possible to collect the evidence that is set out in Exhibit 35, then it is certain that in 1974 much more information could have been collected. In any case, the information contained in Exhibits 37 and 35 would have been enough, had someone properly studied and examined them, to establish that Ppashias had most likely been killed in August 1974 and buried in Lakatamia Cemetery. It appears that the location where Ppashias' Battalion was serving had eighteen dead in total. The collection crew collected eighteen bodies from the same area who were transported and buried at Lakatamia Cemetery. If the location of their burial was known, as the Republic had an obligation to record, then Ppashias could have been searched for amongst eighteen dead soldiers instead of amongst hundreds...

149. ...With this information, that could have been available in 1974 if the Republic had followed established procedure and conducted a reasonable investigation into the matter, there cannot be any doubt that Ppashias could have been identified through his personal effects."

Let it be noted that in relation to the above paragraphs and the relevant excerpt from **Vasos Vasiliou and others v. Republic of Cyprus**, which is referred to as Exhibit 35, is the corresponding Exhibit 29 in the present case (TOP SECRET Note for file Y.A.5.14.3.1.10).

As far as Human Rights are concerned, the basis of the duty is the Constitution and the European Convention on Human Rights (ECHR), which has been ratified with the "Law on the European Convention for the Protection of Human Rights (Ratifying Law of 1962) 39/62" (Convention) and which by virtue of Article 169(3) of the Constitution has force superior to any other Legislation. In addition, the general principles of international customary humanitarian law, as expanded upon below, have in addition constituted a part of the binding case-law of the European Court of Human Rights (ECtHR).

It is an established principle of Cypriot case-law that any violations of human rights, which are not covered by the Civil Wrongs Law, may constitute an actionable right. This principle was laid out by the Supreme Court in **Takis Yiallourous v. Nicolaou (2001) 1 A.A.Δ. p. 558**. In the judgment in question, the Supreme Court even stated that:

“...The effective application of human rights, delimited in Article 35 of the Constitution, provides for the award of compensation to the victim of the violation for any damage that he suffers, as a physical and social existence...”

(1) Human rights

In relation to the violations enshrined in Cypriot law and the European Convention of Human Rights (ECHR), as ratified by the Republic of Cyprus. The Court cites the text from the Ratifying law, as well as the English text, so that references may be made to the case-law, which is also in English.

As far as the Republic's duty to apply human rights is concerned, it is obliged to do so under Article 1 of the Convention that essentially sets out the obligation to secure Human Rights. Article 1 of the ECHR is set out below:

1. The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

I do not believe that there is any objection on the Republic's part here to the fact that Human Rights were applicable during the critical period, i.e. August 1974, and that consequently the Republic was responsible for securing them.

The fact that Reservist Palmas was killed in an area that during that particular period was not controlled by the Republic (as was the position of the Republic in its Defence), does not in any way change the Republic's obligation to determine his fate, given the peculiarity in this instance of having the ONLY COLLECTION that took place during the Turkish Invasion. The dead were collected the day after their death by soldiers of the National Guard with National Guard vehicles on orders of the GEEF.

Thus the bodies (including that of Reservist Palmas) came within the jurisdiction of the Republic and the Republic had de facto control of all the information that would constitute it responsible for securing the families' rights in accordance with the Convention.

By improperly carrying out its duties during the collection and burial of Charalambos Palmas' body and its failure to conduct the proper investigation, the Republic not only breached its obligation under Article 7 of the Constitution and the corresponding Article 2 of ECHR but based

on the facts of the present case it also violated Article 8 of the Constitution and the corresponding Article 3 of the ECHR since the omission to investigate constitutes humiliating and degrading treatment of the Plaintiffs, as well as Article 15 of the Constitution and the corresponding Article 8 of the ECHR since the Plaintiffs' personal and family life was fundamentally affected.

ECtHR case-law relating to Article 2 of the ECHR is abundant, and includes the obligation to effectively investigate instances where someone's life is in danger and where persons have been killed and are missing.

There is no doubt that life-threatening circumstances subsisted during the critical period and the fact that people died and that the Republic collected their bodies makes the Republic's responsibility all the greater.

Questions raised include why the dead were collected the day after they were killed, as it was neither mentioned to the Plaintiffs or other families nor were the identities of the buried soldiers ascertained. Why did they not do that which Sivvakas successfully did nineteen years later, as shown in Exhibit 29? If they had asked a few questions I am certain that they would have confirmed that Palmas was buried in Lakatamia. Indeed in the event of an exhumation, the clothes, personal effects, hair, teeth and other information would have put together a picture that, with the family's help, would have led to identification.

I cite the following from ECtHR case-law, which I was referred to by Mr Demetriades.

In ***Varnava and others v. Turkey, App 16064-16073/9000, dated 10.01.2008***, decision of the Plenary Session of the ECtHR, where they refer to the fourth ***Inter-State Cyprus v. Turkey*** and the Court concludes that:

"...it held that the failure of the authorities of the respondent State to conduct an effective investigation aimed at clarifying the whereabouts and fate of the Greek-Cypriot missing persons who disappeared in such life-threatening circumstances (see paras.133-136) disclosed such a continuing violation.

112. The inter-State case concerned the phenomenon of disappearances, which, although linked to a specific point of time when the missing person was last seen and the surrounding circumstances, may be distinguished from conventional cases of use of lethal force or unlawful killings which are dealt with under Article 2. In the latter cases, the fate of the victim is known;

the former are characterised by an ongoing situation of uncertainty and, not infrequently, callous inaction, obfuscation and concealment...”

The tragedy of the whole affair is that the Republic is just as guilty as Turkey in the case of Reservist Palmas.

In ***Jularic v. Croatia, app no. 20106/06, ECtHR 20 January 2011***, the ECtHR examined the violation of the obligation to conduct an effective investigation under Article 2 of the Convention, and referred to the obligatory steps that a State ought to take, but also referred to the additional requirement of immediacy and reasonable expedition when taking these steps. In particular, it mentions that even in the cases where it is accepted that there were difficulties in the specific instance, the state must operate promptly in order to secure public control and confidence.

The decisions of ***Bazorkina v. Russia App. No. 69481/01 decision dated 27.07.2006***, ***Imakayeva v. Russia App. No 7615/02 decision dated 9.11.06*** and ***Baysayeva v. Russia decision dated 05.04.2007*** are also relevant.

I think it pertinent to refer once again to the above-mentioned case of ***Vasos Vasiliou and others v. Republic of Cyprus, Action no. 13863/2002 decision dated 05.11.2010***, which, despite not being binding, is helpful. In particular I cite the following:

“174. ...In this specific instance where the Republic had de facto access to the information and witnesses, it is obliged, independently of Turkey’s obligation, to conduct an effective investigation.”

With regard to Article 8 of the Constitution and Article 3 of the ECHR, the following are noted and the relevant articles are set out below:

Article 8 of the Constitution: “No person shall be subjected to torture or to inhuman or degrading treatment.”

Article 3 of the ECHR: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The Republic’s entire behaviour was of such magnitude and duration that it constitutes inhuman and degrading treatment of the Plaintiffs, in breach of Article 3 of the ECHR.

The Plaintiffs were subjected to a torturous process that lasted for over 25 years, during which they intensely experienced the feeling of agonising expectation, uncertainty, and mental

anguish. The cause of this unbearable pain was the Republic's failure to take the necessary steps to investigate the fate of the fallen soldier and to notify his family.

In ***Varnava and others v. Turkey*** (above), the decision of the Court as shown in paragraphs 137 and 138 is:

"The Government of Cyprus

137. All the second applicants had, in their view, been victims of inhuman treatment. Three were wives of the missing men, and six of mothers or fathers (though other relatives have taken over as applicants in some cases). They have all lived with uncertainty and anguish for over 25 years. The wives have never remarried as they do not see themselves as widows. They have never given up trying to find out what happened and their anguish is worsened by the fact that there are people with information who are not revealing what they know (citing Comm. Rep, §157, where it was stated that information about former Turkish Cypriot commanders was being concealed) and the lack of co-operation of the Turkish forces with attempts to obtain information (Dillon Commission, p.18, second para.). This all produced helplessness and frustration in the second applicants. Further, the situation disclosed inhuman treatment inflicted as a matter of practice.

A. The Court's assessment

138. The Court refers to the principles set out and the findings in the Inter-State case (cited above, §155-158). No point of distinction arises in the present case. The silence of the authorities of the respondent State in the face of the real concerns of the second applicants, relatives of the nine missing men, attains a level of severity which can only be categorised as inhuman treatment within the meaning of Article 3. It therefore concludes that, during the period under consideration, there has been a continuing violation of Article 3 of the Convention in this respect."

The mental anguish inflicted on the Plaintiffs as a result of the Republic's failure to conduct an effective and thorough investigation was also considered to be inhuman and degrading treatment within the meaning of Article 3 of the ECHR and Article 8 of the Constitution in the above-mentioned case of ***Vasos Vasiliou and others v. The Republic of Cyprus***.

Indeed matters for the Republic are even worse as it had, despite knowing about the unknown dead soldiers who had been collected, encouraged the idea to the Plaintiffs that their loved one

was missing, thus keeping their hope of his return alive. Given this, the recent ECtHR case, **Janowiec and others v. Russia, app nos 55508/07 and 29520/09, ECtHR 16 April 2012**, is decisive, and relevant excerpts are set out below:

“B. The Court’s assessment

1. *The applicants claimed that a prolonged denial of information about the fate of their relatives, taken together with dismissive and contradictory replies by the Russian authorities in respect to their requests for information and the Russian courts’ insistence of the version of ‘disappearance’ in defiance of the established historic facts, amounted to inhuman or degrading treatment with the meaning of Article 3. The Court recalls that Article 3 has previously been relied on in a number of cases in which the applicants complained that they had suffered inhuman and degrading treatment on the part of the domestic authorities in the context of the death or disappearance of their next of kin.*

2. *The essence of the issue under Article 3 is not that there has been a serious human rights violation concerning the missing person; it lies in the authorities’ reactions and attitudes to the situation when it has been brought to their attention. The relevant factors include the proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person. The Court emphasises that the finding of such a violation is not limited to cases where the respondent State has been held responsible for the disappearance but can arise where the failure of the authorities to respond to the quest for information by the relatives or the obstacles placed in their way, leaving them to bear the brunt of the efforts to uncover any facts, may be regarded as disclosing a flagrant, continuous and callous disregard of an obligation to account for the fate of the missing person (see, amongst many authorities, *Varnava and others*, cited above, §200; *Osmanoğlu v. Turkey*, no.48804/99, §96, 24 January 2008; *Bazorkina v. Russia*, no.69481/01, §139, 27 July 2006; *Imakayeva*, §164, and *Gongadze*, §184, both cited above; *Taniş and Others v. Turkey*, no. 65899/01, §219, ECHR 2005-VIII; *Orhan v. Turkey*, no. 25656/94, §358, 18 June 2002, and *Çakıcı v. Turkey [GC]*, no. 23657/94, §98, ECHR 1999-IV).”*

The references to ***Bazorkina v. Russia, App. 69481, dated 11.12.2006***, ***Imakayeva v. Russia App. 7615/02 dated 09.02.2007*** and ***Baysayeva v. Russia, App. 74237/01 dated 24.09.2007*** are also relevant.

There is also a relevant extract from ***Bazorkina v. Russia (App. 69481/01, ECtHR 27 July 2006)***:

“139. ...The Court would further emphasise that the essence of such a violation does not mainly lie in the fact of the ‘disappearance’ of the family member but rather concerns the authorities’ reactions and attitudes to the situation when it is brought to their attention...”

As has already been mentioned, the acts and/or omissions of the Defendant violate Article 15 of the Convention and the corresponding Article 8 of the ECHR:

Article 15 of the Constitution:

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

2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.

Article 8 of the ECHR:

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

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

It is apparent from the present testimony that the Plaintiffs’ family life has been affected by the continuous failure of the Republic to establish the fate of Reserve soldier Charalambos Palmas.

The ECtHR’s case-law is relevant in regard to the meaning of private life as it is protected under Article 8 of the Convention. The ECtHR has given to the meaning of “private life” a broad interpretation, and the phrase has been interpreted to mean both the physical as well as mental well-being of the individual. (***Castello-Roberts v. The United Kingdom, app. No. 13134/87, 25 March 1993***). In addition, as was made clear in ***Bensaid v. The United Kingdom, app. No.***

44599/98, ECtHR, 6 February 2001, Article 8 protects the right to personal development and considers that the protection of mental stability/well-being is an indispensable precondition to effective enjoyment of the right to respect for private life.

In the above cases it is also explained that in the instances where the treatment in question does not meet the high threshold of Article 3 of the Convention, if the treatment itself negatively affects the physical or mental well-being of the individual, then it may violate Article 8 in regard to the right to respect for his private life (see **Bensaid v. The United Kingdom** (above)).

The erroneous cultivation of the Plaintiffs' impression that Reservist Palmas was alive and missing has clearly negatively affected their family life. Plaintiffs 2 and 3, Palmas' daughters, experienced daily the anguish of their mother, Plaintiff 1, who had set off on a difficult but persistent search for her husband. This had an effect on the two children's natural growing up, who were deprived of family warmth and the carefree years of their childhood.

The endless pain, the unexplained absence, and the subsequent unbearable feeling of injustice that the Plaintiffs experienced affected their private and family life to such an extent that it can only be considered to be a violation by the Republic. In addition, and in relation to the violation of the same article, the fact that the Republic deprived the Plaintiffs of the right to bury their dead husband and father constitutes a further violation of Article 8 of the Convention.

This right was recognised by the ECtHR in **Pannullo and Forte v. France, app. No. 37794/97, ECtHR 30.10.2001**, where it referred to the state's positive obligation to return the body of the dead to their families, as well as in the subsequent case of **Girard v. France, App. No. 22590/04, ECtHR 30.06.2011**. In this case, the Court noted that the inexcusable delay in returning the remains to the family of the deceased constitutes a violation of their right to private and family life. It is evident from the present case-law that the ECtHR has enshrined the basic principles of international customary humanitarian law.

Also pertinent is the decision of **Hadri-Vionett v. Switzerland, app. No. 55525/00, ECtHR 14.02.2008, NA 14**, where the ECtHR highlighted the families' right to be present at the burial of their dead relatives.

There are no pleadings and neither does the evidence show that the acts and/or omissions of the Republic were necessary under the exceptions to Article 15 of the Constitution and the corresponding Article 8 of the ECHR, e.g. national or public security or public health. Consequently, I consider that the Republic is liable for this breach as well.

(2) International Humanitarian Law

The acts and/or omissions of the Republic during the collection and burial of the fallen soldiers, and subsequently during the exhumations, as well as the fact that the Republic, although it knew or ought to have known the circumstances surrounding Charalambos Palmas' death and burial, neglected to notify the Plaintiffs of these circumstances, which constitutes a violation of Humanitarian customary law as set out in the Geneva Convention, which codifies International Humanitarian Law.

The Geneva Convention concerning the Law of War and, more specifically, the Conventions for the Protection of Victims of International Armed Conflicts are the following:

I. Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field (First Convention)

II. Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention)

III. Convention relative to the Treatment of Prisoners of War (Third Convention)

IV. Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention)

They have entered into force since October 1950 and were ratified by the Republic of Cyprus on 18 July 1966 with Law 40/66 as well as the Additional Protocol:

“Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), with Annexes, Final Act and Resolutions” which entered into force on 7 December 1978 and was ratified by the Republic of Cyprus on 1 June 1979 with Law 43/79.”

The above international conventions have superior force to that of domestic law according to Article 169(3) of the Constitution, and more importantly, they create specific obligations for the Republic. In addition, it ought to be noted that in the present case, relevant principles of international customary humanitarian law that have stemmed from the above conventions are invoked, and are binding on every state regardless of whether or not it has ratified the conventions.

In particular, in the present case the Republic violated the following principles of International Customary Humanitarian Law that are related to the protection of family life, the treatment of the

dead and the obligation to return the remains and their personal effects to their families, the manner of burial and obligation to record all available information and notify the families. (Let it be noted that the obligations in question apply to all concerned parties in a conflict.):

“Fundamental Guarantees

Rule 105. *Family life must be respected as far as possible. [IAC/NIAC]*

The Dead

Rule 112. *Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction. [IAC/NIAC]*

Rule 113. *Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited. [IAC/NIAC]*

Rule 114. *Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them. [IAC]*

Rule 115. *The dead must be disposed of in a respectful manner and their graves respected and properly maintained. [IAC/NIAC]*

Rule 116. *With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves. [IAC/NIAC]*

Missing Persons

Rule 117. *Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate. [IAC/NIAC]*

Rule 105 is inextricably linked with Rule 117, which establishes the families’ right to the truth. With a reference to the ECHR and to relevant case-law, under customary humanitarian law keeping any information from the family that relates to the fate of a missing person – an obligation laid down in Rule 117 – constitutes inhuman treatment and violates Rule 105. Rule 105 is also linked to Rule 114 and the obligation to return the remains to the relatives.

Pertinent in the current case is Rule 115, which provides for the obligation to dispose of the dead in a respectful manner – first of all in individual graves – and the proper maintenance and protection of their graves. The facts of the present case constitute a violation of this obligation, as the Republic proceeded to bury the dead in mass graves that it did not properly protect as it allowed, inter alia, exhumations in 1979-1981 by ELDYK, which had tragic consequences, as they did not respect the families of the dead, who had either received the wrong remains or wrongly assembled remains, as was shown in the evidence, and made it more difficult to exhume and identify the G/C dead soldiers at a later stage, whose remains were transported to Greece, thus making the identification of the dead at a later stage even more difficult.

It is also obvious from the present evidence that the Republic violated Rule 116, which sets out an obligation to record all available information and mark the location of the graves, an obligation which is related to and strengthened by the afore-mentioned Rules 105 and 117.

The interpretation of the above-mentioned Rule identifies these obligations as an obligation of means, in contrast to an obligation of result. This obligation consists of taking all possible measures to achieve an aim. In the present case, the existence and operation of a system was revealed, as was the existence of available and adequately effective methods of identification. However, the Republic for some reason did not manage, despite being capable of doing so, to comply with its obligations.

Rule 117 is crucial to the present case. The families' right to the truth. The families' right to receive every possible piece of information concerning the fate of their loved ones that could possibly relieve them of their perpetual and torturous wait. In the present case, it has been shown that either the Republic did not, with due care, keep Palmas' records, or it did not proceed to investigate the matter further for whatever reason and inexcusably concealed the existing evidence from the dead soldier's file, evidence that resulted in the violation of his family's, namely the Plaintiffs', rights to receive adequate information. DW1's testimony is relevant but so is Plaintiff's 1, PW1's, which reveal the difficulties the Plaintiffs encountered when trying to secure access to their loved one's file, but also reveal the reluctance – up until the present day – of the Defendant to present the entirety of the relevant testimony.

It is manifest that whilst the Republic had the relevant evidence at its disposal, it did not proceed to take the necessary steps for the immediate investigation of the relevant evidence that has existed since August 1974 concerning Charalambos Palmas' death and his burial at Lakatamia Cemetery and did not notify the Plaintiffs of his fate promptly as it ought to have done. Quite the

opposite, it misinformed the Plaintiffs, alleging that he was a prisoner in Turkey and/or was presumed missing.

THE ARGUMENTS OF THE REPUBLIC (DEFENDANT)

By way of introduction, it must be noted that the Plaintiffs are clear about not disputing the fact that Turkish invaders killed Reservist Charalambos Palmas, as the Republic tried to argue in an attempt to misrepresent the basis of the Plaintiffs' claim.

However, the Republic chose to ignore the fact that Palmas was serving in a voluntarily assumed reservist duty. It must be clear to every reasonable citizen that just as the State, through its army, has certain basic obligations to the persons in service under orders (e.g. the obligation to tend to the wounded), it also has an obligation to collect the bodies of those killed and to record all the details that would assist in identification and burial, as well letting their families know.

The Republic cannot ignore these obligations and responsibilities, or even worse, acknowledge responsibility only when it wants to. That is, the Republic cannot, as it unacceptably puts forward in its written address, accept the obligation of collecting the bodies, assigning this responsibility to the army, and then omit to comment on its failure to fulfil its subsequent obligations.

In addition, it is clear from Mrs Mavromoustakis' address that the Republic is attempting to excuse its mistakes and omissions by using these very same mistakes and omissions. The Defendant is essentially invoking alleged mistakes that were made during the exhumations of 1979-1981 (which exhumations the Republic in any case has not proved) in order to excuse its subsequent inaction. It is obvious that this stance firstly constitutes an admittance of responsibility by the Republic for its omissions, but also reveals an unacceptable fear of accepting responsibility and an unreasonable logic. The Republic cannot invoke past mistakes (for which it produced no evidence) in order to justify its subsequent inaction, and to deny all responsibility thereof.

From the Plaintiffs' evidence before the Court, which has not been materially disputed by the Defendant, it has been proved that during the material period:

(a) the State existed and the army had a functioning system that was being applied, albeit selectively.

(b) Charalambos Palmas fell in battle late in the evening on 16 August 1974, and was collected by the National Guard on the morning of 17 August 1974 when, following an Agreement that was admitted but not produced by the Defendant, the bodies were collected from Ayios Pavlos. It has been shown that Charalambos Palmas' case is inextricably intertwined with that of his fellow fallen soldier Panayiotis Athanasiou, son of PW9 Vasos Athanasiou who, based on his testimony (which is not disputed by the Defendant) identified his son in 1974 during his burial, as he was in a recognisable condition. The burden of proving the extent to which Palmas was not in a recognisable condition given the evidence presented has shifted to the Republic, which did not present any evidence to the contrary.

(c) Pamboris' testimony dated 06.06.1975 Exhibit 24 and PW7 Loukas Lingis' testimony, who had already given testimony in 1975 to the Second Office of the 211th Infantry Battalion before being discharged, constitute essential evidence for the present case, as it bears witness to the fact that the Republic has had evidence since 1975 that led to, or could have, with reasonable further investigation, led to the conclusion that Palmas was dead, and in any event manifested the Defendant's obligation to seek Palmas in Lakatamia Cemetery amongst the dead it had buried as "unknown". Let it be noted that PW9 was referred to Lakatamia Cemetery on 17.08.1974 and made it to the burial of his son, whom he recognised. The Republic continued, for years afterwards, and for reasons unknown, to consider him a missing person.

It is evident from the above that the Republic has chosen to overlook the evidence presented (through PW9 Vasos Athanasiou) that makes it unnecessary to further develop the possibilities of identification available during that period, since Charalambos Palmas's body was in a recognisable condition and was buried in an unacceptable manner in Lakatamia, in the free areas, without any attempt of identifying him.

The Republic also argues that Plaintiff 1 is prevented from bringing her case, by putting forward her application to keep her husband's name on the list of Missing Persons. However, the Republic – not by chance – chose not to mention that Plaintiff 1 proceeded with said application in 1996, namely 22 years after her husband's death when she was called to the Service of Missing Persons in order to be informed (Exhibit 7 is relevant).

Plaintiff 1 filed the said application after 22 years of persistently seeking the truth, and only after having experienced rejections and difficulties in her quest for the truth, and had understandably lost any faith she had in her own State. Her testimony is indicative of this and is also important in relation to the repeated claims the Republic made that the Plaintiffs had been constantly kept informed by the State.

The difficulties the Plaintiff encountered in accessing her husband's file, which was classified as "Secret" are recorded. The Republic has not rebutted this testimony, as PW1 said that he had never given the file to Mrs Palmas and furthermore was unable to say what had happened 5-6 years before he took over as Archive Manager. Let it be noted that PW1's testimony does not help the Defendant's line of argument at all.

In relation to the Defendant's argument that the Plaintiffs did not include in their pleadings the violation of Article 2 of the ECHR, the following must be said: in the present action, the Plaintiffs are asking for a declaration of the violation of their human rights, that are enshrined in Articles 1 and 2 of the Convention (above), (para.19A and 19B of the Statement of Claim) and claim damages based on Articles 3 and 8 of the ECHR. It is true that the Plaintiffs have not made a clear particular reference to Article 2 of the ECHR in the Statement of Claim; however, this does not in any way affect the content thereof and the claims of the Plaintiffs. As can be seen from the analysis of the Republic's violations of its statutory duties, it is appropriate to analyse, in addition to Articles 3 and 8 of the Convention – on which the Plaintiffs are basing their right to damages – Articles 1 and 2 of the ECHR and customary international law, as these are both connected to the obligations that were not fulfilled and the Republic's responsibility. Therefore, analysing these was necessary in order to set out the Plaintiffs' rights, which were evidently violated

However, it must not be perceived that these articles, namely Articles 1 and 2 of the ECHR, as well as customary international law, have not been included in the pleadings. These articles are the legal embodiment of the particulars of the violations that have been clearly set out in paragraph 16 of the Statement of Claim and are, in addition, included and implied and in any case not excluded when the Plaintiffs invoke violations of International Conventions and the Republic's statutory duties.

Article 2 of the ECHR is analysed in the present case in relation to the procedural obligation of each member-state of the ECHR to conduct an effective investigation. The Republic, as is specifically included in para.16(b), (d), (g), (h), (i) and (j) of the Statement of Claim, failed to

conduct any sort of effective and/or reasonable investigation into Charalambos Palmas' fate, despite having been able to do so. The analysis and proof of this failure is further supported by omissions that are included in para.16 of the Statement of Claim and have a legal foundation in our Constitution and in International Law, the violation of the Plaintiffs' rights, who are claiming compensation under Articles 3 and 8 of the ECHR and relevant case-law.

The fact that it was not the Republic that killed Palmas does not affect the invocation of Article 2 and the Plaintiffs' case in this particular instance, despite the Republic's attempt to argue otherwise. In any case the procedural obligation to conduct an effective investigation is independent and is examined by the ECtHR independently from the State's material obligation that arises under the same Article. In support of this I cite a relevant extract from the ECtHR's decision in ***Silih v. Slovenia, App No 71463/01, ECtHR 9 April 2009.***

*“156. The Court observes that the procedural obligation has not been considered dependent on whether the State is ultimately responsible for the death. When an intentional taking of life is alleged, the mere fact that the authorities are informed that a death had taken place gives rise ipso facto to an obligation under Article 2 to carry out an effective official investigation. (***Yasa v. Turkey, no. 25660/94, para 171, 24 May 2005***)*

*158. The Court also attached weight to the fact that it has consistently examined the question of procedural obligations under Article 2 separately from the question of compliance with the substantive obligation and, where appropriate, has found a separate violation of Article 2 on that account...In some cases, compliance with the procedural obligation under Article 2 has even been made the subject of a separate vote on admissibility (see for example ***Slimani v. France, no. 5767/00, paras 41-43, July 2004***)...What is more, on several occasions a breach of a procedural obligation under Article 2 has been alleged in the absence of any complaint as to the substantive aspect of Article 2 (*Calvelli and Ciglio, paras 41-57*)*

159. Against this background the Court concludes that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous duty. Although it is triggered by the acts concerning the substantive aspects of Article 2 it can give rise to a finding of separate and independent interference...In this sense it can be considered to be a detachable obligation arising out of Article 2 capable of binding the State even when the death took place before the critical period.”

The Republic had the obligation to conduct an effective investigation because it had collected and consequently had at its disposal the body of Charalambos Palmas in an identifiable state. It even had at its disposal and/or could reasonably procure eyewitness accounts from people who had last seen Palmas alive. However, it did not take all of these existing and reasonable measures in time, it did not notify his family, and it is on these points that its liability is founded. The delayed response of the Republic with respect to its above-mentioned obligation resulted in a torturous burden for the Plaintiffs to shoulder for at least 22 years. Even now, the Republic has not given a justification for its inaction. Palmas was never a missing person. He was not killed on the territory of another state during the material period. Even today, the place he was killed is in the buffer zone – and let it be noted that the day after his death, the collection of his body was permitted.

The Defendant erroneously argues that this particular issue has already been decided by the ECtHR. Palmas' case is special in the sense that the Republic received his body on the day after his death, from the state that killed him under life-threatening circumstances. The question to be tried is this unjustifiable failure by the Republic of Cyprus to investigate the death of the fallen soldier, Charalambos Palmas, in 1974, whose body was collected by the Republic itself – an issue which has not been brought before the ECtHR. However, the fact that Turkey may be responsible for Palmas' death does not preclude the Republic's duty to investigate and notify the relatives as soon as Palmas' body was collected by the Republic. The Defendant cannot, as it is unacceptably attempting to do, avoid its obligation claiming that Turkey is responsible for Palmas' death. In any case the possibility of simultaneous responsibility of both States cannot be precluded, in the framework of each State's acts or omissions.

There is no doubt concerning Turkey's responsibility for Charalambos Palmas' death, just as there ought to be no doubt in relation to the ongoing obligation of the Republic of Cyprus, starting with the collection, to identify and investigate Palmas' death and to inform the Plaintiffs. The Republic's obligation to identify Palmas is even more palpable when we take into account the fact that when he was collected, Palmas had been dead for less than a day, a fact which serves to strengthen the Plaintiffs' arguments that it was easy to identify him in 1974 before his burial, and there was a strong probability of successfully doing so, before he was buried as yet another unknown

Consequently, the Defendant cannot invoke the judicial knowledge of the chaotic war period in 1974 in an attempt to excuse its manifest failure to present relevant testimony. How did the

agreement to collect bodies come about, and between whom, how many and who were collected on 17.8.1971, day of ceasefire? Why were they driven to Lakatamia cemetery for burial, without an even rudimentary attempt at identifying them? Why were no details sought, that would have assisted in identifying them later on? Many questions, which sadly remain unanswered.

The Defendant erroneously considers that the location where Charalambos Palmas was found dead should not be a factor in the attribution of responsibility. Based on the facts of the present case, the fact that Palmas' body was collected from the Ayios Pavlos area by soldiers of the National Guard, and buried in free areas is not only a factor in the attribution of liability, but is also proof of liability. From the above, one cannot but conclude that it was the Defendant who possessed all the information concerning the fate and burial location of the fallen soldier. Despite this, the Republic chose not to conduct any identification process when it buried Charalambos Palmas as "unknown" in Lakatamia cemetery, or at a later reasonable stage.

The Defendant admits that there were testimonies in relation to Palmas' fate but excuses its inaction by saying that it was uncertain that Palmas was dead. One must question however whether it is possible to have testimony that is more certain than the one twenty years later when the Republic concluded that Palmas was dead and did not file his case with the CMP, essentially accepting that he ought not to have been included in the list of Missing Persons but instead ought to have been looked for in Lakatamia cemetery.

Although I note the Defendant's allegation that it had to be certain of Palmas' death before notifying his family, the Plaintiffs are right in alleging that the Republic had a duty to keep them informed at all stages of the investigation, providing them with information, even if it included caveats. It cannot be doubted that even incomplete information, respectfully provided, concerning any findings in relation to Palmas, would have been better than nothing and would have had far less agonising consequences for the Plaintiffs than the uncertainty and subsequent disappointment of the expectations they had harboured (for many years) of their loved one's return.

I also note that the Defendant adopts a most peculiar stance, as it invokes, on the one hand, DW2 Kariolou's testimony – who had rejected the possibility of earlier DNA identification – but at the same time does not explain at any point the reasons it allowed the exhumations of 1979-1981 to take place. Given that it claims that identification was impossible, how did they plan on

identifying the bodies from the 1979-1981 exhumations? Why were the exhumations permitted? Had no bodies been identified before the arrival of DNA methods?

It is also remarkable that although, through DW2, the Republic presents DNA methods as the only method of identification, it also presents DW3 and DW4 who refer to alternative methods of identification; in particular, DW3 describes fingerprints as “gospel” for the identification of bodies during the critical period, whilst DW4 mentions dental evidence.

The Defendant, in its attempt to excuse its inactivity until 1990 – when, as it mentions, it re-visited the issue of missing persons – essentially degrades the very serious question of missing persons. In addition the Republic once again vaguely asserts that there were many other problems, without presenting relevant evidence before the Court. The Defendant, in terms of the problems it claims it had to deal with, mentions the creation of the list of the dead, and those who were missing from the list (“and to ascertain who was missing”). As far as I can perceive, the Republic refers to the list of Missing Persons (Exhibit 32), which was published in 2000, i.e. 26 years later! How does the Republic justify this lengthy delay concerning a matter that it has said is a priority? Furthermore, Palmas was never a missing person and was erroneously included in this list. Palmas, according to the GEEF’s findings, was “taken prisoner or killed”. Prisoners were released in the autumn of 1974. Palmas was not amongst them. Consequently, if anyone had consulted his file, he would have established that he had been killed, and should have therefore been sought in Lakatamia cemetery.

The Republic’s references to the difficult task of those fighting on the front line, as well as the depleted morale of the Cypriot population only serves to further confirm the Republic’s unacceptable stance, which has used people’s highly charged emotions surrounding the critical period in order to be absolved of all its clear obligations.

It is important to note that the Defendant admits that there was a system in place to bury the dead, which was followed by the army. The Republic however failed to present any testimony that proved that it did, as it mentions, everything possible to follow the appropriate procedures.

In relation to everything the Republic mentions concerning its commitment to not proceed to unilateral exhumations, I note that no relevant evidence was produced, but that in any case, a policy decision such as this does not preclude the State’s responsibility.

In relation to the Defendant’s reference to the sole collection that took place in Ayios Pavlos, the Plaintiffs wonder why the Defendant kept the fact of the collection secret, and what purpose did

it serve? It is the Plaintiffs' impression that precisely this fact of a sole collection was a strong indication of their fallen husband and father's fate, which should have been immediately further investigated.

It is notable that the Defendant mentions that 139 dead were collected from the area, and that 31 of these were G/C soldiers. How did the Republic know with such certainty which of these bodies were G/C soldiers when it has tried to convince the Court through its evidence and its address that a chaotic state of affairs subsisted during the critical period? How can it make a statement like this with so much certainty, but in Palmas' specific case wash its hands of all responsibility and claim that it could not conduct any procedure of identification? It is reasonably curious!

In general the Republic was acting in contravention of the Constitution and its obligations under International Law, and/or acted without due care and attention.

D. DAMAGES

1. Non-pecuniary Damages

The Plaintiffs claim, in 19(C) of the prayer of their Statement of Claim, general damages for the loss they suffered as a result of the violation of their Human Rights.

This is done in conjunction with paragraph 16 and the relevant particulars, as well as in conjunction with paragraphs 17 and 18 of the Statement of Claim. The Plaintiffs mention therein that due to the acts and/or omissions of the Defendant, they did not have any news or information about the fate of the Deceased for about 26 years. The uncertainty, doubt and anxiety that they suffered over a significant and continuous period caused them serious additional mental suffering and/or mental anguish and/or anxiety and significantly disrupted their personal and family life. In this framework, the Plaintiffs demand general (non-pecuniary) damages. Their effort mainly focuses on non-pecuniary damages in accordance with Cypriot and ECtHR case-law. Non-pecuniary damages are being demanded as compensation for the established violations.

I believe I ought to refer to the Cypriot case of **Takis Yiallourous v. Nicolaou** (2001) 1 A.A.Δ. 576.

The Court dealt with the matter of damages for the violation of Human Rights between two citizens. Let alone when the State itself is in breach of its own citizen's human rights. I do not consider it necessary to make specific references to the judgment because the entire text is relevant. However, it is worth emphasising the following extract:

"...the effective application of human rights, laid out in Article 35 of the Constitution, provides for compensation of the victim of the violation which is caused to its entity, as a physical and social existence..."

I consider there to be a direct causal link between the breach of the Plaintiffs' rights and the damage they have suffered. This was shown from the evidence. If the Republic had displayed the requisite respect for the Plaintiffs' rights, they would not have lived for at least 22 years with the uncertainty of the determination of the fate of their missing husband or father. I do not think that it is necessary to refer specifically to the Plaintiffs' testimony which, *inter alia*, manifests the uncertainty, doubt and anxiety that they suffered, which has evidently caused severe mental suffering, mental anguish, and anxiety, resulting in the disruption of their personal and family life.

The ECtHR's case-law on this question is characteristic, and so I am focusing on that.

The most important decisions are **Bazorkina and Russia Imakayeva v. Russia** and **Baysayeva v. Russia** (above).

As far as **Bazorkina** is concerned, the Court awarded non-pecuniary damages of the order of €35.000. These damages were awarded in light of the fact that the Applicant was found to be a victim of the violation of Article 3 with respect to Article 13 of the Convention. These violations stemmed from her son's disappearance in February 2000 in Chechnya. Taking into account the time that had elapsed between Mrs Bazorkina's son's disappearance (February 2000) and the Court's handing down of the judgment (July 2006) about 6,5 years had gone by. As a consequence, Mrs Bazorkina was awarded €5385 for each year her rights were violated.

The Court followed a similar line of reasoning in *Imakayeva* where it awarded Mrs Imakayeva non-pecuniary damages of about €70.000. This was awarded in relation to the violation of her rights under Articles 3 and 13 as well as Article 8. These violations had to do with the disappearances of her son AND husband, who were missing for 6 years and 4,5 years respectively, totalling an average of 5,25 years for each Missing Person. Dividing the amount of €35.000 for each missing person by 5,25, it appears that €6.666 was awarded for every year that the Applicant's rights were violated.

Finally, I refer to *Bayaseva*, where the Applicant was found to have been a victim of the breach of Article 3 in relation to Article 13 concerning her husband's disappearance in March 2000. The Court awarded her non-pecuniary damages of €50.000. Taking into account the time that had elapsed between Mrs Basayeva's husband's disappearance (March 2000) and the handing down of the Court's judgment (April 2007), i.e. about seven years, Mrs Basayeva was awarded about €7,140 for every year her rights were violated.

I consider that as far as Plaintiff 1, Charalambos Palmas' wife, is concerned, the analysis above must be the foundation on which this Court will base its decision to award non-pecuniary damages.

In light of this analysis, and given that these violations continued for 22 years (until 1996), I agree with the Plaintiffs' position that €6000 must be awarded for each year their rights were violated. At this point I must say that the plaintiff was officially informed of her husband's death and burial at Lakatamia Cemetery in 1996 (22 years after his death). Independent of the fact that she herself continued to consider him a missing, the Republic's obligation to officially notify her ceased to subsist. As a consequence, the Plaintiff is entitled to damages of €132,000 (six years times €6.000 = €132.000).

As far as the other two Plaintiffs are concerned, I believe that there ought to be a reduction of 50%, as they were not in the same position as their mother. This does not of course mean that they are not entitled to compensation and the above-mentioned case-law indicates that a missing person's children may also receive damages. However, I am reducing the amount I awarded to the mother by 50% when deciding the children's damages, given their relationship with the deceased and their age during the time in question.

In light of the above, I believe that it is just and reasonable to award €66.000 to each Plaintiff from Plaintiffs 2 and 3 that are the children of Charalambos Palmas.

I return to the case of ***Vasos Vasiliou and others v. Republic of Cyprus*** (above), despite the fact that the decision is not yet final as the Republic has lodged an appeal, as it is the only similar case in Cypriot case-law. In this action, for the violation of the Plaintiffs' human rights, the Court awarded €50.000 to the deceased's wife, and €25.000 to each of his children, without, however, awarding punitive damages.

2. Punitive Damages

It is the Plaintiffs' position that despite not having included a request for punitive damages in the pleadings, exemplary or additional damages can be awarded in the present proceeding. Indeed, they are necessary in the present case (according to the Plaintiffs' advocate), given the conduct of the Republic during both the period 1974-2000 and the manner in which it conducted this entire proceeding, and especially the line it chose to follow and the way it dealt with the Plaintiffs during the Plaintiffs during the cross-examination at the trial.

Once again reference is made to the Yiallourous case (above), on p.13 "...damages may assume an aggravating nature where the damage is multipurposely severe and in exceptional cases may even assume a punitive nature in order to serve as an example..."

The judgment even mentions that "...setting an example through damages has been limited in England..." p.20. As a consequence it has not been ruled out and it is the Plaintiffs' position that this has not been ruled out in Cyprus either, whether as a result of the application of common law or as a development of Cyprus Law itself.

The English decision Thompson v. Commissioner of Police (1997) 2 All ER 762, which deals with the issue of punitive damages for Police conduct, is relevant.

I refer to p.763, which states that:

"(2) where there was evidence to support a claim for exemplary damages, the jury should be told that it was possible, in exceptional cases, to award damages to punish the defendant where

there had been conduct (including oppressive or arbitrary behaviour) by police officers which deserved exceptional remedy. Such damages were unlikely to be less than £5,000 and might be as much as £25,000 with an absolute maximum of £50,000 in cases where officers of at least the rank of superintendent had been directly involved in the misconduct...”

Indeed there is not just the potential to award such damages, but one of the factors that may be borne in mind is the manner in which the proceeding and the trial is conducted, as referred to on p.775 of the above judgment.

“...Aggravating features can also include the way the litigation and trial was conducted. (The aggravating features listed take account of the passages in the speech of Lord Reid in Broome’s case [1972] 1 All ER 801 at 836, [1972] AC 1027 at 1085 and Pearson LJ in McCarrey v. Associated Newspapers Ltd (No.2) [1964] 3 All ER 947 at 957, [1965] 2 QB 86 at 104-105)...”

In the context of Cypriot case-law, the case of Papakokkinou and Others v. Princess Zena de Tyra Kanther (1982) 1 CLR 23 is also pertinent. In this case, the Supreme Court took into consideration both English and Cypriot case-law and concluded thus:

“...The fact is that conduct accompanied by a marked element of arrogance, insolence or malice, may justify an award of exemplary damages, particularly if it tends to humiliate the victim of the tort...” and continues “...If we were required to choose between two streams of authority, our inclination would be, as presently advised, to follow the wider approach that permits the award of exemplary damages for tortious conduct whenever such conduct is so intrinsically blameworthy as to deserve punishment from a civil court. In this way, civil law would retain an effective armoury for the suppression of contumacious conduct out of keeping with minimum acceptable norms of behaviour”.

Finally, we may refer to the case of Varnava and Others v. Turkey (above). Here the Court reiterated that Article 41 of the Convention does not permit it to award punitive damages, but distinguished its position from that of Domestic Courts which consequently were able to do so. The reference in para.156 is relevant:

“...The Court would also emphasise that Article 41 of the Convention does not provide a mechanism for compensation in a manner comparable to domestic court systems nor for

imposing punitive sanctions on respondent Governments (Orhan v. Turkey, no.25656/94, §448, 18 June 2002)...”

As a result, the Court may award punitive damages and I consider them to be appropriate in this particular instance. The Republic violated the rights of the Plaintiffs arising under the Law and International Treaties, as has been analysed above. In addition, it must be borne in mind that these violations were committed by the Authorities to which the Plaintiffs had placed their trust and on which they had pinned all their hopes. Why were there no exhumations in Lakatamia Military Cemetery for 25 years? The leadership, for inexplicable reasons, did not want to perform its duties arising under the Law with respect to such an important question. Did they, perhaps, not wish to admit that some missing persons were in fact dead and buried since 1974 in the government-controlled areas? No answer. And why, in 1979-1981 were there selective exhumations in Lakatamia Cemetery? Why did they cease? No answer. Why was the list of Missing Persons (Exhibit 32) only published on 10 July 2000, only then making the identities and number of missing persons public? No answer.

It is for the above, *inter alia*, reasons that the Court is obliged to award punitive damages, as it appears that the responsibility for the violations lay across the whole spectrum of the Government Mechanism, from the common soldier who performed the SOLE collection in August 1974 to the high-ranking political and military leaders who took the decision in 1979 and 1999 to proceed with exhumations in the government-controlled areas of Cyprus!

But I also consider the Republic's entire approach in this case as well as its conduct during the trial to be important.

The Republic's attempt to suggest to the Plaintiffs that they were informed and that it was their own choice to insist on considering Palmas to be a missing person, as well as implying that it was doubtful that the Plaintiffs would have felt differently had their father been dead and not missing, are indicative and are taken into account by the Court when ruling on damages, and particularly punitive ones.

The Republic's attempt to equate, inhumanly and outrageously, the pain and uncertainty (evidenced without a doubt in testimony before the Court) of awaiting their father's return with death, which over the course of time has been proven to hurt less, and which signals a difficult

but prospective new start, is yet another factor that the Court takes into account when ruling on punitive damages.

It is also appropriate to emphasise that the obligation to investigate and inform the relatives was exclusively the Republic's and does not result in any obligation whatsoever on the part of the family. I refer to the ECtHR's decision in Bazorkina (above), and cite the following extract:

“What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own initiative once the matter comes to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures.”

Taking into account the above, I believe that the sum of €20.000, in accordance with the principles set out in Thompson (above), would under the circumstances be correct and fair to be awarded to each Plaintiff in the form of punitive damages. Therefore, the sum of €20.000 is awarded to each Plaintiff in the form of punitive damages.

I deliberated whether I should award aggravated damages, instead of punitive damages, in addition to the damages already awarded. However, I consider that in the present case it is most appropriate to award punitive damages in order to show how the Republic's violation of the Plaintiffs' human rights was humiliating, lengthy and persisted for years on end, and how serious the consequences were for the Plaintiffs. I also consider unacceptable the conduct that the Defendant Republic manifested during the entire proceeding, with unnecessary challenges and deliberate delays, even at the stage of submitting written addresses.

In Charalambos Palmas' instance, as has been presented in the present case, the Republic did not display the requisite care with respect to the safekeeping of the evidence that would have secured the ability to identify him, and neither did it take steps to conduct the necessary and proper investigation in order to ascertain his fate. The Republic, despite possessing and keeping data which it treated as “Secret”, and which led to the conclusion that Charalambos Palmas was dead, or which could have potentially led to such a conclusion, did not take steps, as it ought to have done, to conduct a prompt and effective investigation. Whilst the Republic had alternative and adequate methods of identification at its disposal or within its knowledge, it

did not proceed to identify Palmas, although it had permitted exhumations for the purpose of identifying Greeks who were buried in the same Cemetery where Palmas was buried between the years 1979-1981.

None of these things, which could and ought to have been done, were done, and the responsibility is with the defendant Cyprus Republic.

In addition, adequate evidence has been produced that proves that the Republic violated its obligation to inform the family correctly and in good time, thus violating their right to the truth, and condemning the Plaintiffs to an anguish that borders on inhuman treatment. The Republic's entire conduct since 1974 has been, at the very least, disrespectful towards the Plaintiffs.

Given the above, it is my opinion that the Republic has violated its Statutory and under International Conventions obligations, including those relating to the Law of War, and resulted in the violation of the Plaintiffs' human rights.

Before concluding, I must say that it does not escape my attention that on 15 July 1974, one week before the invasion, there was an attempt to dissolve the State and that a Republic that was in almost total disarray with a transitional government was called upon to defend itself against the Turkish invasion. There was an attempt to dissolve the State from within. But the state subsisted and cannot deny the rights of those who ran to defend its existence and its integrity (and their families). Without these dead heroes, it is possible that the Cyprus Republic would not exist today.

In addition, let it be noted that although the Republic has been condemned in a similar case (see Vasos Vasiliou and others v. Republic of Cyprus, Case No. 13863/2002), the Republic has not assumed responsibility for its acts and/or omissions but insists on litigating with the relatives of its, until recently missing, heroes.

Consequently, judgment is issued in favour of the plaintiffs and against the Cyprus Republic as follows:

(a) For Plaintiff 1, the sum of €132.000 as General Damages, plus €20.000 as punitive damages, plus legal interest from the date of filing the action, plus costs as assessed by the Registrar and approved by the Court.

(b) For Plaintiff 2, the sum of €66.000 as General Damages, plus €20.000 as punitive damages, plus legal interest from the date of filing the action, plus costs as assessed by the Registrar and approved by the Court.

(c) For Plaintiff 3, the sum of €66.000 as General Damages, plus €20.000 as punitive damages, plus legal interest from the date of filing the action, plus costs as assessed by the Registrar and approved by the Court.

[Signed] M. Papamichael, S.D.J.

True Copy

Registrar

/mkst