



## Missing Persons, Human Rights, Justice and Truth

The issue I will examine today is in relation to Missing Persons in Cyprus and would like this to be a case study concerning Justice and the pursuit of truth.

We have in Strasbourg, established, human rights violations under Articles 2 and 3 of the Convention. With respect to Article 2 there is a positive obligation to carry out an investigation and in relation to Article 3 the absence of information by Turkey to the relatives of the missing Greek Cypriots was of such magnitude that it amounted to inhuman treatment.

But let me now turn to the facts of the cases. Missing persons have always been treated as a humanitarian issue, or at least that is what the politicians were telling us. There have been inter-communal clashes in Cyprus in 1963 and there has been a military intervention by Turkey which has resulted in the effective control of more than 40% of the island as of the summer of 1974.

As a result of these hostilities 1508 Greek Cypriots have been reported missing and 493 Turkish Cypriots have also been missing. By virtue of the efforts of the Committee on Missing Persons as well as cooperation between the two Communities, so far, only 569 Greek Cypriots and only 184 Turkish Cypriots have been identified. Their remains have been returned to their loved ones so that they may give a burial according to their respective religious beliefs.

We have now reached the point where information in relation to Missing Persons has been very scarce. The leaders of both Communities have been vocal in asking for persons to come out and give information. So we now have a dilemma as to whether justice is more important from the establishment of the truth. There seems to be a conflict between traditional justice which involves punishment of the perpetrators and restorative justice which is used in post conflict situations in an effort to rebuild a society.

Let me now turn to the legal basis of the rights of the relatives. I say that there is a right to truth that the relatives are enjoying. Not only is there a right for the relatives to have the truth but there is also an obligation for the state involved to take whatever action is necessary to disclose it.

It is well known that Article 2 of the Convention, the right to life includes an obligation to investigate. A prolonged delay of this investigation and an absence of information has been held to amount to inhuman treatment under Article 3 of the Convention both in the 4<sup>th</sup> inter-State Application Cyprus v Turkey<sup>1</sup> but more importantly in the case of Varnava and Others v Turkey<sup>2</sup>.

<sup>1</sup> <http://hudoc.echr.coe.int/eng?i=001-144151>

<sup>2</sup> <http://www.concernedhistorians.org/le/424.pdf>



Let me now turn to the CMP, Committee on Missing Persons. Its Terms of Reference are rather interesting and are set out below.

You can also find a link <http://www.cmp-cyprus.org/content/terms-reference-and-mandate> where one can have access to them. This was the result of a political compromise in 1981 and thereafter in 1997 the leaders of the two communities agreed for an exchange of information. As a result of the activities of the CMP, exhumations commenced in 2006, which, as I have already mentioned, brought about results.

Nevertheless, there are still 939 Greek Cypriots and 309 Turkish Cypriots who are still missing. That is to say that it is not known what their fate is, probably dead, but in any event their remains have not been recovered and the families have not been allowed to give a proper burial. The CMP operates on a de-facto immunity given by the Attorney Generals of both sides of the Green Line who in 1990 stated that they will not prosecute anyone who comes up with information. This de facto immunity has never been challenged.

As stated there is now a pressing need for additional information because there are no further reliable sources for information as to burial grounds and the witnesses are simply dying. The question I wanted to put to you is whether a Truth Commission on the basis of the South African Model could work in Cyprus. One could say that if such a Truth Commission is to work, one must expand the de facto criminal immunity to a de jure one. More importantly though there must be a civil and administrative immunity for the perpetrators who have accepted responsibility, expressed remorse and have provided appropriate information.

This would entail a three step approach. The First one would be amending the Terms of Reference and you can see below the amendments that are being suggested in yellow:



## TERMS OF REFERENCE

### Establishment of the Truth Committee on Missing Persons in Cyprus

1. A Truth committee on missing persons in Cyprus hereinafter "committee" will be formed immediately consisting of three members. The Greek Cypriot and Turkish Cypriot sides will each appoint one humanitarian person to the committee. The third member will be an official selected by the ICRC for that purpose with the agreement of both sides and appointed by the Secretary- General of the United Nations. The committee may take over and continue the work of the Committee on Missing Persons in Cyprus.
2. The decisions of the committee will be taken by consensus to the extent possible. In the event of disagreement between the representatives of the two sides, the third member shall consult both of them with a view to bringing their views together and reaching a consensus.
3. Each of the committee members can be assisted by up to two staff assistants as necessary. No other persons will participate in the deliberations or investigative work of the committee. No person directly involved with the issue of missing persons may be appointed as staff assistant. The committee ~~will not~~ may request outside expert assistance as well as funding.
4. The committee will not have a chairman, but the meetings will be directed by the members on a rotating basis for a period of one month's duration --- the first director will be the official of the ICRC, to be followed by the Turkish Cypriot member or the Greek Cypriot member, to be determined at the first meeting by lot.
5. The three members of the committee will meet immediately and will continue in regularly scheduled sessions for as long as required.
6. All parties concerned shall ~~cooperate with~~ allow the committee ~~to ensure~~ unhindered and immediate access throughout the island for the investigative work of the committee.
7. The committee shall look only into cases of persons reported missing in the intercommunal fightings as well as in the events of July 1974 and afterwards.
8. The order of investigation of cases will be decided by the committee, but it is agreed that the first investigative case will be put forward by the Turkish Cypriot member of the committee. This will be followed by a case put forward by the Greek Cypriot member. The investigations will rotate to the extent possible until all cases have been examined.
9. The committee's entire proceedings and findings will be strictly confidential. Any violation of this rule would place the work of the committee in jeopardy.



10. The committee will determine whether to issue public statements or reports without prejudice to paragraph 9.
11. The committee will not ~~attempt to~~ attribute responsibility for the deaths of any missing persons ~~or~~ but will make findings as to the circumstances and cause of such deaths.
12. ~~No~~ Every disinterment will take place under the aegis of this committee. ~~The committee may refer requests for disinterment to the ICRC for processing under its customary procedures.~~
13. The committee will use its best efforts to draw up comprehensive lists of missing persons of both communities, specifying as appropriate whether they are alive or dead, and in the latter case approximate time of the deaths.

~~23 April 1981~~

21 February 2011

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Essentially the above changes would allow unhindered and immediate access to the whole island, it would also expand the ability of the Truth Commission to investigate and establish the facts, but it would not attribute individual responsibility.

The Second step would be to amend the Evidence Law, CAP 9, on both sides of the Green Line so as to make evidence given in such proceedings inadmissible. It is interesting to note that the Law up to 1963 was one and based on the English Common Law. Thus, it would not really be difficult to do that.

And the Third step would be to generate internal rules for the Truth Commission where responsibility, offer of remorse and the provision of information would set the threshold for (granting) this immunity.

In fact, one could go one step further and consider the possibility of compensation as well.

Let me give you as a fact that in the 4<sup>th</sup> inter-State application, Cyprus v Turkey, judgment of 12 May 2014, €30million was awarded against Turkey for 1,456 Greek Cypriot Missing. That was part of the subject matter of this application and this amount was for moral damages for their families. That is about €20,000 per family. That perhaps deals with the Missing Persons that Turkey is accountable for.

Would it not be interesting if the Cyprus Government could offer a similar amount for the 493 Turkish Cypriots, that have been missing? That would amount to €10million as possible compensation. In fact if the Cyprus Government could have a sense of imagination, it could say that it would pay this €10million as soon as Turkey pays the

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<sup>3</sup> <http://www.truthnowcyprus.org>



€30million already awarded by the Court in the 4<sup>th</sup> inter-State application and which are pending since 2014.

Now let me turn to the discussion which I hope this presentation has sparked. We have a humanitarian issue that of the Missing Persons. I have given you the legal dimension of it as well as the caselaw that underlines these rights. I have identified the need for further information and suggested to you the possibility of amending the Terms of Reference of the CMP as mentioned above. Thus efforts can be undertaken therein which would generate information whereas on the other hand it would guarantee the de jure immunity for criminal, civil and administrative actions.

Is this perhaps the time for a political solution of this matter within the Council of Europe? Such a solution could be brought about within the context of the proceedings before the Committee of Ministers which supervises the execution of the judgments of the Court on a quarterly basis and could therefore consider this possibility as part of the general measures that could be brought in place.

I thus hope that I have sparked a discussion for the group today.

Thank you for your patience.

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