**Investigating across borders: The Right to the Truth in an European context**

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**ABSTRACT**

Victims (direct and indirect) of gross human rights violations have implicit recognition in terms of a duty of effective investigation and other focused principles. In the context of migration and extraordinary rendition, this duty gives rise to a particular problem of investigation in a multi-national situation, where, arguably, an effective investigation requires elements of transnational cooperation. Recent decisions by the European Court of Human Rights, in particular *Güzelyurtlu v Turkey and Cyprus*, have developed legal principles relevant to this situation. This article probes how the Court's jurisprudence reflects and accommodates the need for those across-border investigations in order to meet the criteria of an effective investigation and, with it, the right to the truth. It does so with additional reference to international legal norms that attach to enforced disappearance, as the right to the truth has found most fervent expression in this human rights context thereby serving to further illustrate the two foci of this contribution: transnational fact-finding in relation to migration and extraordinary renditions.

**Keywords:** enforced disappearance; right to the truth; effective investigation; European Court of Human Rights; transnational cooperation

**Introduction**

Gross human rights violations, including enforced disappearance, and the legal response thereto, remains a recognised European issue.[1] The actions of Russian security services in Chechnya continue to generate a large number of cases before the European Court of Human Rights (the Court).[2] *Aslakhanova v Russia* (2012) includes a general survey and notes that the Court has been developing and applying Convention rights to enforced disappearances over decades in major areas of conflict such as in south-eastern Turkey between 1992 and 1996, the conflict in Cyprus, particularly after the Turkish invasion 1974, and in Bosnia and Herzegovina in the 1990s.[3] This paper refers to other recent and continuing occasions of

disappearances which are characterised by the involvement of more than one state and which may require cross-border investigations in Europe: extraordinary rendition, as they have been categorised as systematic forms of enforced disappearance ‘by means of arbitrary, incommunicado and secret detention’ and ‘detainee transfer’[4]; and migration, for increasingly concerns are expressed about the under-reported instances of involuntary disappearance occurring during migration.[5] This paper explores the extent to which European Convention law, in particular, guarantees the victims’ rights to the truth in circumstances where the duty to investigate is shared or distributed between more than one state.

The article analyses existing European Court of Human Rights jurisprudence on transnational elements of investigations, to further our understanding as to whether they are effective and compatible with right to the truth.[6] The paper concludes, that in light of recent cases, the Court is seemingly willing to increase the normative force of the investigative duty for the benefits of victims.

## The Right to the Truth and an effective investigation

Principles developed by the Court over the years[7] include and confirm the importance of an effective investigation, characteristically, but not necessarily, of a criminal nature, to be undertaken by the state when breaches of the right to life or disappearance is alleged.[8] The investigative duty has long been recognised as instrumental in, and necessary for, the effective judicial protection of human rights including of Articles 2, 3 and 5, and also Article 13. The requirements for promptness, independence, adequacy (i.e. having sufficient authority to determine all the matters relevant to human rights protection) and an appropriate involvement of relatives, have been summarised and applied in numerous cases.[9] The Court has developed other principles making clear, for instance, the continuing nature of the duty to

investigate[10] and its possible application to deaths or disappearances that occurred before the entering into force of the Convention in respect of the state concerned.[11] Since official denial and silence are defining characteristics of clandestine detention and extrajudicial killings, the Court has also developed principles and practices relating to the collection and assessment of a wide range of evidence and to the analytical significance of the burden and the standard of proof. The Court is then willing to make findings of fact reflecting rebuttable presumptions as to what happened and its own 'free evaluation of the evidence'.[12] The suffering of close relatives of the disappeared person is recognised by their being treated, in respect of the missing, as applicants in their own right and, where they have close ties with the missing persons, they may also be direct victims whose suffering stems from official indifference.[13] The official silence behind human rights breaches may go along with the state's refusal to cooperate with the Court, in breach of Article 38. In this circumstance the Court has shown itself willing to go beyond the normal declaration of a breach coupled, perhaps, with a payment in just satisfaction, and give increasingly imperative 'guidance' to the Committee of Ministers as to what is required to remedy the breach, this is discussed below. Nevertheless, the duty remains one of 'means' not 'results'[14]. An investigation which, in the end, fails to establish even some basic facts, may still meet the effective investigation standard so long as the state has taken appropriate steps available to it.[15]

In its approach, the Court is giving effect to the 'right to the truth'. This widely referenced concept has at its heart the idea that victims of atrocity have a strong interest in knowing in detail, in respect of themselves or a loved one, how, and perhaps why, the events happened and who was responsible. It is a 'right' in that the force of the interest justifies a duty on others, specifically a state with jurisdiction, to supply this information through an effective investigation done, in appropriate ways, with victim participation. Originally expressed in relation to missing persons in times of war[16] and enforced disappearance,[17] its reach is

expanded to include other forms of atrocity. It may have reached the status of a general principle of law.[18]

The inherent presence of the right to the truth in the principles developed by the Court can be suggested. For example, the duty to investigate and provide information in relation to deaths and disappearances arises even if there is no allegation that the state had responsibility for causing the death or inhuman treatment.[19] Similarly, recognising that relatives of missing persons may themselves suffer in ways beyond the article 3 threshold (as indirect victims), is a recognition that a lack of knowledge and understanding can of itself breach the Convention[20]. The right to the truth is also given effect by the insistence of victims' involvement in the investigation.[21]

The Court has, in most cases, reasoned as though the right to the truth is inherent in, rather than an express driver of, its jurisprudence. The Court's justification for a state's duty to investigate atrocity is instrumental – it is necessary for the legal protection of human rights particularly by means of the prosecution and punishment of perpetrators.[22] An effective investigation is a necessary stage to satisfy other victims' interests in justice and reparations. In so far as the right to the truth places the focus on information, as an outcome valuable in itself, it may be thought a necessary but not sufficient basis for responding to atrocities. On this view the right to the truth is best understood as an incident in the panoply of rights and duties, including justice (and the condemnation of impunity), and reparation which engage a state's responsibility regarding atrocities.

Where there have been references, in terms, to the right to the truth,[23] its impact has been two-fold. Firstly, it is to urge that knowing what happened emphasises its social or public aspect - the 'right' of society to know its history and to prevent the repetition of the causes of atrocity,[24] If nothing else, the Convention requirement that the investigation must be

instigated by the authorities, tends to the satisfaction of this point. But, secondly, the right to the truth supports raising the 'normative force', the relative weight in argument, of disclosing the truth for victims. This is almost to the reverse effect of the social aspect, since it places the focus of judicial responsibility on victims[25] and on the sense that courts must do whatever is possible, even to the extent of straining establish principles of law, to advance victims' interests.[26] It is this idea, the greater normative force of rights reflecting a victim's interest in knowing what happened, that may explain and justify the way the Court has enhanced its principles relating to an effective investigation.

**Enforced Disappearances as a lens to explore an effective investigation involving transnational facts**

The reasons for further referencing and anchoring this European exposition in legal norms surrounding enforced disappearance is threefold: Firstly, the right to the truth finds its clearest expression in human rights law as part of the UN Convention for the Protection of All Persons from Enforced Disappearance (UNCED); secondly this allows an examination of how progressive (or not) the European approach is vis-à-vis the international benchmark; and thirdly, there is an increased emphasis of, and call for, inter-state cooperation during investigations in standard-setting processes surrounding enforced disappearance.[27]

The European Court of Human Rights acknowledges the UNCED[28] as providing the basic international framework for dealing with enforced disappearances. The Convention's aim was to remedy 'gaps'[29] in the applicable international law by establishing a dedicated Treaty with detailed provisions aiming to prevent enforced disappearance, combat impunity and establish victims' rights to justice, reparation and truth. The Treaty therefore sets legal standards for state parties to provide in their domestic law.[30] Article 24(2) UNCED embodies,

in terms, the right of victims to the ‘truth’ in the sense of knowing the progress and results of the investigation. The right of victims to reparations is also guaranteed.

The European Court of Human Rights, of course, applies the ECHR not UNCED. Indeed, there remain ‘gaps’ such as between desiderata of the Parliamentary Assembly of the Council of Europe[31] and UNCED. A good deal of the Parliamentary Assembly’s concerns are satisfied by UNCED – such as the recognition of family members as victims in their own right,[32] significant measures to counter impunity[33] and an absolute ban on secret detention.[34] But there remain areas where the desiderata have been only incompletely fulfilled. For example, the Assembly wanted a definition of enforced disappearance that clearly extends to non-state perpetrators; but UNCED only imposes a separate duty on states to investigate and punish.[35] The Assembly sought full recognition of enforced disappearance as a continuing crime not bounded by limitation periods; Article 8 UNCED recognises the continuing nature of the crime but allows limitations so long as they are lengthy.[36] Thirdly, there is no express requirement in UNCED for states to exclude perpetrators from amnesties.

The authority of UNCED is weakened by the limited range of state signatories. Countries involved, in their different ways, in extraordinary rendition, such as the United States, the United Kingdom, Poland and Afghanistan are not state parties. As regards migration into Europe, receiving coastal European states such as Spain, France, Italy, Greece are parties, but many countries through which migrants often pass, such as Libya, Turkey, Hungary, are not.

It remains the case, therefore, that the Court retains jurisprudential space, under the European Convention, to develop independent principles relating to effective investigations and it provides a closer and more effective process and remedy for enforced disappearance in Europe. Two particular circumstances worthy of attention are migration and rendition, as they serve to underscore the importance of cross-border investigations.

***Migration***

Migration provides an increasingly acknowledged, though empirically perhaps still unsubstantiated, European circumstance of enforced disappearance.[37] requiring coordination among countries.[38] Links between migration and disappearance are repeatedly made. The UN Human Rights Council Working Group, reporting in 2017, notes, *inter alia*, that migration may be triggered by a person's fear of forced disappearance in his or her home country; migrants may disappear during the journey or in the destination country, or after being unlawfully returned. Relatives may migrate in order to search for disappeared members of their families and may themselves be abducted. Migrants may face abduction for political reasons, disappear in the context of smuggling or trafficking or through disorganised or clandestine detention and deportation. Such disappearances do not necessarily exemplify deliberate state policy in the 'Nacht und Nebel' tradition, but it is clear that state responsibility for creating conditions for enforced disappearance can be found in the corrupt behaviour of officials and their complicity in smuggling and trafficking, official indifference, policies of 'push back' which encourage more dangerous behaviour by migrants and policies of detention and return and the use of unofficial camps and the agencies of non-state actors, create the conditions for forced disappearance.[39] In relation to Mediterranean migration generally, the Court is beginning to establish general principles in respect of, for example, the detention and movement of migrants[40] and the ban, in Article 4 of Protocol 4 on collective expulsion of aliens.[41]

***Extraordinary rendition***

Secret renditions in the context of counter-terrorism do reflect the 'Nacht und Nebel' tradition in the sense of being a deliberate state policy of removing alleged political opponents from legal protection and subjecting them to ill-treatment. They are different in not normally resulting in death and because, characteristically, the person regains, as a prisoner or a free person, some degree of civil status. It is also different in being conducted by reasonably well functioning democracies normally adherent to the rule of law. According to the Rendition Project, more than 130 individuals were held and tortured as part of the CIA's rendition, detention and interrogation programme[42]and at least 54 countries have been identified as being complicit in such operations.[43] That this is properly understood as enforced disappearance has been confirmed by the Court in a number of cases.[44] And, importantly, due to the complicity of member states, comes within the jurisdictional ambit of the Court.

**Transnational Facts**

A particular point about the application of the right to the truth and, specifically, the legal duty to investigate, in respect of migration and rendition is that both circumstances involve multi-national facts and, consequently, the sharing of the investigation duty between more than one country.

The following will concentrate on six particular issues that may arise in relation to transnational investigations. First, there is the question of jurisdiction. Where there are multi-national facts in respect of a state's procedural obligation effectively to investigate alleged breaches of Convention rights, a duty of cooperation between states pre-supposes that the alleged violation is within the jurisdiction of each state under a duty to cooperate, as that is

defined in Convention terms. Secondly, there is the nature and scope of the duty to cooperate itself, and aspects of that duty involving, thirdly, information provision and, fourthly, data protection. Failure of multi-national cooperation can lead to the involvement of international organisations, and the impact of this on the Convention duty to investigate is a matter, fifthly, to be considered. Finally, the developing approach to remedies by the ECtHR in the context of the investigative duty will be discussed.

***Jurisdiction and the Scope of Investigation***

As mentioned above, the investigation duty under Article 2 ECHR is independent, separate and autonomous. A state may have an investigation duty under the Convention which exists even though the state does not have legal responsibility for any substantive breach of Article 2. This 'detached' nature of investigation duties applies, *mutatis mutandis*, in the context of other Convention rights[45]. Thus, the investigation duty may apply in respect of deaths that occurred before the Convention came into force in a state[46]. This detachedness is indicated by a seemingly more extensive view of a state's jurisdiction when considering the investigation duty. Convention guarantees must be secured for all persons within a High Contracting Party's jurisdiction[47] Primarily, this refers to a state's recognised territory; but there is the well-known concept of extra-territorial jurisdiction in international law. A state which, through its agents, exercises 'authority [or power] and control' over a person in another country (or perhaps even in international space) may have a duty to guarantee that person's human rights, including the investigative duty.[48] This 'control' test has been defined and developed by the European Court, as exceptions to the territorial test for jurisdiction, in various ways. Leading authority is *Al Skeini v United Kingdom*[49] but a Grand Chamber has recently summarised this exceptional jurisdiction in *M.N. v Belgium*[50] and noted that it is exercised on the basis of the specific facts of a case. Thus, a state can be acting within its Convention jurisdiction if it is exerting 'effective control' outside its national territory either

directly through its own forces[51] or through the activities of a subordinate local administration; likewise, if the facts show that the state's agents are exercising control over individuals, on ground outside its normal territory but also in buildings, aircraft and ships operated by the state. Similarly, the actions of a state's diplomatic and consular officials, in respect of the state's nationals, can be within the state's jurisdiction. As the discussion below may indicate, this is a complex, uncertain and developing jurisprudence; as well as being of considerable political and diplomatic sensitivity[52].

But in respect, at least, of the independent duty to investigate, whilst this normally arises in respect of deaths occurring within the state's jurisdiction defined by the territorial, control or agent test[53], there may be jurisdictional links which trigger that duty in respect of deaths occurring outside the scope of those tests. In *Güzelyurtlu v Turkey and Cyprus*[54] a Grand Chamber found, first, that a jurisdictional link, sufficient to establish an investigation duty under Article 2, could be based on the fact that the state had opened its own criminal investigation into the death. The general survey in *M.N. v Belgium*[55] seemingly accepts that a criminal investigation of a death outside a state's territory or control can trigger a 'jurisdictional link' obligating the state to meet the Article 2 standard. But the latter case makes it clear that the simple fact of an applicant bringing a civil action in the domestic courts is insufficient. Otherwise, the actions of the applicants would be sufficient to engage the Convention obligations of the state – which would thereby become, in effect, universal.[56]

*Güzelyurtlu v Turkey and Cyprus*[57] had gone further and suggested that additional 'special features'[58] of a case are capable of creating 'jurisdictional links' for the purposes of a duty to investigate. In the case, a jurisdictional link could arise from the acceptance by the Convention state of international responsibility for the territory in which the death occurred (as by Turkey in respect of Northern Cyprus). The Court resisted giving a definite list of these special features and did not attempt to articulate the general principles which might explain

and justify why such a jurisdictional link arises. Nor are they mentioned in the *M.N.* summary – though this may be explained by it not being an investigation duty case.

The obvious difficulty of a jurisprudence of 'special features' is to establish a convincing principled grounding, consistent with the rule of law requirements of certainty and foreseeability, for these allocations of state responsibilities. The decision in *Hanan v Germany*[59] may not have provided this clarity. Here the Grand Chamber held that the effectiveness of an investigation by the German authorities into an attack by German forces in Afghanistan could be measured against the standard of an 'effective investigation' in Article 2. On the one hand the Court rejected the idea, found in *Güzelyurtlu,* that a principled basis for jurisdiction could be grounded on the sufficient fact that the Convention state had commenced its own criminal investigation. Such a jurisdictional link to Article 2 might deter domestic investigations, and, secondly, the idea has the potential for an uncontrolled extension of the reach of the Convention. Instead, the Grand Chamber sticks with the fact-based 'special features' jurisprudence, announced in *Güzelyurtlu*, but does so in a way which perhaps suggests a principle: Article 2 review of investigations of deaths for which the state has responsibility, but which are outside its territory or area of administrative or agent control, derives from pre-existing domestic and international legal obligations to investigate for which, it seems, Article 2 then provides a standard and process to enforce these duties. In the case these were investigative obligations under both international humanitarian law and German domestic law, but restrictions (under the ISAF forces agreement) on local investigations. The control of contributing nations over criminal investigations of their own forces raised the possibility of impunity which Article 2 review would prevent. *Hanan v Germany* suggests that, whilst the full transnational reach of the procedural limb of Article 2 (beyond territorial and control jurisdiction) is going to remain dependent on the factual context of the case, nevertheless this contextual focus should be on making effective existing

legal obligations to investigate and ensuring they can be put into effect without impunity. In contrast to *Güzelyurtlu*, although without refutation, the case does not provide a principled justification for the *creation* of a state's duty to investigate extra-territorial facts, and to that extent does not enhance the right to the truth.

The open-ended approach to 'special features' in *Güzelyurtlu* might, speculatively, have opened the argument that a Convention state's rescue activities create a jurisdictional link applying to deaths and disappearances in the Mediterranean.[60] However, the significance of such factual links may have been diminished by *Hanan*, and, in the absence of responsibility for the death, that case would not trigger an investigative duty under Article 2 based on the legal obligations found in UNCED (which apply to the coastal states). *M.N. v Belgium*, also, makes it harder for a jurisdictional link to be established merely through consular links with asylum seekers who do not have other links with the state.

***The duty to cooperate***

*Güzelyurtlu* contributes significantly to the human rights jurisprudence on a state's duty to cooperate with other states in order successfully to undertake an effective investigation. The Grand Chamber notes that the case law on cooperation in the context of an effective investigation is scarce. Its rulings in this context are important and, perhaps, seminal. To summarise: where more than one state has jurisdiction over a matter engaging the investigative duty, they are likely to be under a duty to co-operate even if their diplomatic relations are very poor.[61] The justification for this emerges from the Convention's purpose of collective protection that should be practical and effective.

But here emerges a difference with the more open-ended extra-territorial jurisdiction discussion. The duty to cooperate is of means, not results. It is a duty to take those measures

which are not just necessary for an effective investigation, but are also available. Cooperation is limited to states 'exhausting in good faith', the available, voluntarily entered into, treaty obligations existing between the states – such as extradition treaties or agreements for mutual assistance. States are not expected to cooperate with each other in a legal vacuum. They can be expected only to follow the 'specific formalised modalities of cooperation' [62]. The scope and interpretation of these treaties will, themselves, depend upon general provisions on international law; and the 'specific modalities' can be complex and, perhaps from the perspective of the right to the truth, limiting. The European Mutual Assistance in Criminal Matters Convention 1959 authorises, for example, refusal of assistance if executing a request for cooperation would 'prejudice sovereignty, security, *ordre public* or other essential interests of the country'.[63] This provision, amongst others, was accepted by the Grand Chamber as justifying Cyprus' refusal to cooperate with the TRNC in *Güzelyurtlu*. In the absence of a legal framework, there is no general, background, duty to cooperate. Thus in *Rantsev v Russia*[64] (involving, in the context of trafficking, a death in Cyprus of a Russian citizen) the refusal by Cyprus to accede to Russian requests and activate the Mutual Assistance Convention, of which Russia was a signatory, meant that Russia had no Convention obligation under the Convention to cooperate.

It is tempting to draw a link here with the development of the law on extra-territorial jurisdiction other than that based on control (see above). In so far as *Hanan v Germany* (above) creates general principles, it is to the effect that, outside territory and the control principles, the investigation duty is not created by an extended Convention jurisdiction; it is, rather, that jurisdiction is extended in order to give effect to existing legal obligations to investigate. This parallels the search for principle on which the Court grounds the duty to cooperate.

As regards the right to the truth, there are some observations to be made. Limiting cooperation to exhausting pre-existing procedures may not be fully compatible with UNCED. Whilst obligations as to cooperation and the criminal process in Article 14(1) are so limited, the obligation to search, essential to the right to the truth, ought to satisfy the injunction in the 2019 Guidelines to the Convention Against Enforced Disappearance; which is to create a legal basis for cooperation if none exists. There is also a clear jurisprudential difference between the approach to extra-territorial jurisdiction and the approach to cooperation. The former being open-ended and thus already providing jurisprudential space to require what is necessary to fulfil victims' interests, and their, and also the public's, right to the truth. The latter, the duty to cooperate over the effective investigation, is more constrained by existing legal provisions and their modalities.

Having said that, the notion of established legal mechanisms, for instance, includes any normal channels of communication that exist in respect of informal states such as the TRNC or Transnistria. Cooperation may be required even in the absence of diplomatic relations. In *Güzelyurtlu* itself there were no diplomatic relations between Cyprus and Turkey, but both countries had an embassy in Athens through which an extradition request could be validly made.[65] The recent decision of the ECtHR in *Saribekyan v Azerbaijan*[66] (involving an Armenian citizen who strayed over the border and was detained, held incommunicado and killed in Azerbaijan) cites *Güzelyurtlu* in making it clear that the duty to cooperate exists even under conditions of hostility and in the absence of diplomatic relations. In particular, the Court has not really had occasion to address the matter of cooperation outside any existing legal obligations.[67]

This jurisprudence of cooperation has developed in ordinary criminal cases and not yet in relations to the circumstances of widespread atrocity that are the focus of the right to the

truth. That said the Court is seemingly open to place a duty of cooperation on unwilling states for the benefit of an effective investigative outcome and, by extension, victim rights.

***Cooperation and information sharing***

The duty to cooperate in relation to the duty of an effective investigation raises ancillary issues. In particular, the question of the extent of a state obligation to transfer information to another state. The transfer of information is clearly presupposed in the background legal principles of Convention law, as being essential to cooperation. Furthermore, Principle 9.3 of the Guiding Principles for the Search for Disappeared Persons,[68] suggests cooperation agreements to facilitate the rapid and secure exchange of information and documentation relevant to the search for persons who have disappeared in the context of migration; and this glosses the cooperation requirement in Article 15 of UNCED.

But an unwillingness to cooperate may be because of a refusal to share or communicate information. This can be because of hostility between regimes, although, as shown in *Saribekyan v Azerbaijan,*[69] the mere absence of diplomatic relations may not provide sufficient excuse so long as some means of diplomatic contact is available through at least basic factual information (the fact of the applicant's death, for instance) can be timeously communicated. Indeed, the fact of hostility between the states, and any underlying as well as express reasons, such as racial hatred, should figure in the assessment made by the authorities when undertaking the effective investigation.[70]

There are other reasons for refusing to share information such as claims of national security interests, confidentiality and the protection of informants. Of course, these may be no more than unjustifiable acts of self-protection by a state and its agents. Indeed, the Inter-American Court, at times, seems to suggest that, in human rights cases, any 'resort' to public interest grounds for refusing disclosure will be a breach.[71] The interesting and difficult questions

relate to where there are genuine and compelling reasons for secrecy[72]. The European Court recognises that there may be 'reasonable and solid' reasons for a state to refuse to disclose information to another state or to an applicant. The Court's answer is to require disclosure on the basis of what, in the United Kingdom, are called 'closed material proceedings'. In the rendition case *Al Nashiri* the Court referred to gisting, and to the state's editing out of sensitive passages. It went further and referred to its own procedures for restricting public access to documents under Rule 33(2), which include on grounds of 'national security in a democratic society'[73] and further provisions for classifying and keeping material as confidential or even of holding closed hearings. Significantly, authority for the last two procedures, are found not in the Rules of the court but in its practices – they are self-authorised and required of the state party. Poland's objections in *Al Nashiri* were dismissed by reference to these practices – the Court is clearly judge in its own cause on this point. Compared, for example, with the United Kingdom there is remarkably little public discussion or reasoning on the matter.[74] This leaves open the problem of whether it is better to insist on open justice and full public disclosure even though it means that a case may not be able to proceed or, if it does, any judgment be based on inadequate evidence, speculation, or presumption; or whether it is better to have full disclosure to the Court in closed proceedings, with a judgment based on full disclosure to the Court, but only partial disclosure to the victim and the public. The United Kingdom Supreme Court takes the view that it is for the Court to request the information and that there is no breach of international obligations to deny an applicant's claim to communicate sensitive information to the Court. The Supreme Court indicated that an order to disclose to the Strasbourg Court would not be automatic.[75]

For the realisation of the right to the truth such considerations are significant, not least since they raise the question of the extent to which partial information disclosure to victims, and or the public, accords with the requirements of the right. In cases of enforced disappearances,

the minimum level of information required (in line with the UNCED), are the facts surrounding the disappeared person's fate and the whereabouts, in case of death, of human remains and their return;[76] as well as identification of those responsible.[77]

### ***Data Protection***

Cooperation between states will require some degree of data sharing (Article 15 UNCED requires 'mutual assistance' and the Guidelines refer to the 'rapid and secure exchange of information and documentation' in order to facilitate finding a disappeared person (Guidelines Article 9(3)).

But there are clearly major questions here about data security and ensuring that transmission of data protects the human rights of the data subjects. This applies particularly to personal data, including DNA reference samples, which in the case of deaths may be all that is available, and which cannot be processed with consent.

Again, the difficulty raised by the right to the truth in this context relates to the protection and proper processing of personal data. The normal Convention focus will be private life (Article 8) and the need for adequate safeguards whose content will depend on the circumstances. Safeguards in this context tend to be a judicial matter with low deference to the authorities since the requirements of being in accordance with the 'law' and proportionality balancing, are analytically merged in an evaluation granting only a narrow margin of appreciation.[78]

In the context of European migration, Article 8 of the EU's Charter of Fundamental Rights will apply. This gives singular emphasis, not found in the Convention, to the protection of personal data which must be processed fairly and only in relation to specified purposes. Authority must come, if not from the consent of the data subject, then from 'some other legitimate basis laid down by the law'. Charter protection must be at least as strong as under

the Convention; but can be stronger and the separate provision on data protection (and some case law) suggests this may be the case.

In regard to European migration, the General Data Protection Regulation will apply if the transfers of data take place within the scope of EU law. The demands made on those processing personal data under the GDPR are considerable and, in the emergency circumstances of rescuing migrants or seeking those who have disappeared, might be unworkable. The Regulation, providing the highest regulatory standards, allows for some degree of derogation in circumstances that are relevant. In particular, paragraph 73 of the introductory recitals seems to permit GDPR principles and rights to be restricted in a number of contexts including protecting human life in the context of natural or man-made disasters and 'humanitarian purposes'. Assuming the interpretative significance of such recitals, the scope of such limitations on GDPR rights would then be identified in terms of those developed by the European Court of Human Rights in the context of its Article 8 jurisprudence.

***Involvement of international Agencies and Questions of Hierarchy of Laws***

Failure of international cooperation in respect of an effective investigation can lead to the involvement of international organisations, particularly the United Nations. And then the question is whether this displaces the Convention and removes the supervisory authority of the Court. *Varnava v Cyprus*[79] illustrates the problem. Failure of cooperation between Cyprus and Turkey meant that the duty to investigate disappearances was taken over by a UN agency of the Committee of Missing Persons. But their investigations were interrupted and, in any case, because done under conditions of confidentiality and without state powers to compel witnesses, could not meet the requirements of the investigative duty under Article 2 ECHR,

nor the requirements of the right to the truth. The Court called the UN investigation 'problematic, non-binding and confidential'.[80]

In this case the Court did not consider that its jurisdiction was displaced, and it took, in relation to the six month rule, a pragmatic approach to the admissibility of the application - a victim can wait and see until it is obvious that the UN mandate is failing. But this rather by-passes the problem of international law. There is a strong 'victims' interests' case for enforcing fundamental rights, but the international law mandate of the UN cannot be ignored. It must, as in *Varnava*, be given appropriate time to work. But, as Iraq cases demonstrate, there can be a conflict of authority. Potentially, the full weight of the duty of effective investigation could be lessened by other priorities of the UN mission. Article 103 UN Charter gives priority to UN Instruments over other provisions of international law.[81] Consequently, there is a tension between protecting and promoting victims' interests and recognising the hierarchical structure of the rule of law, itself fundamental to human rights protection. In the Iraq cases the Court did not follow the European Union's assertion of its human rights norms not withstanding Article 103 of the UN Charter.[82] This approach protects victims' interests but, perhaps, at the expense of the rule of law. The second, which seems to be the position of both the UK and the Court of Human Rights, in the context of post-invasion Iraq, is to accept that the core of a right may be violated on the authority of a UN Mandate, but that ancillary aspects of the right can still be protected.[83] The right to the truth might provide a reason, therefore, for holding that the investigative duty, ancillary to the right to life, should still be required in its full, effective, form.

***Remedies***

In contrast to the Inter-American Court, which has a broad remedial power,[84] the European Court has a limited formal jurisdiction when it comes to remedies – the declaration of a

breach and a discretionary degree of financial compensation for pecuniary and non-pecuniary losses. But it does not have authority under the Convention to, for instance, order an effective investigation to be undertaken, or require some cooperative act such as an exchange of information or a transfer of criminal jurisdiction. States must take the steps necessary to implement a judgment and their actions are supervised by the Committee of Ministers. But in recent years the Court has dealt with serious breaches, such as might invoke the right to the truth, where there is also reason to doubt state cooperation in implementing the judgment. In this context the Court, has started, against its previous position,[85] to give guidance, sometimes in imperative terminology, to the Committee of Ministers, as to what is required in terms of changes to practice or law. The authority to do this is a Practice Direction of 2007[86] and the stimulus, a lack of state cooperation.  Examples are cases involving Russia, in the context of military action both in Chechnya[87] and, also, in breaking the hostage taking at the Beslan school.[88] The 'guidance' suggests (all but orders) a range of measures including those aimed at getting at the truth of what happened, public condemnation, better training and memorials.[89]

These developments in terms of remedies might indicate the way in which the right to the truth, in its moral and background-legal formulations, acts to increase the normative force of positive rights and duties. The power simply to declare a breach is given enhanced effect through the Court exercising a self-granted discretion to give imperative guidance. The right to the truth, perhaps, is an unarticulated reason for exercising this discretion and an indicator of its content.

**Conclusion**

The article's inquiry offers insights into the European Court's approach to effective cross-border investigations as part of migration and extraordinary renditions, thereby typically involving more than one country. The right to the truth for victims (including families and affected communities) is recognised in international law, including the Court's Jurisprudence, and underpins such an investigative duty. Examining the jurisprudence of the ECtHR on the duty to investigate, inherent, particularly, in Article 2, has shown that the Court is open to the task of responding to the need for an effective investigation capable of transcending state boundaries to ensure victims' rights are served. It has done this by various means including, as has been the focus of this paper, by developing its approach to extra-territorial jurisdiction (a complex and factual context dependent issue) and to the question of cooperation between Convention states.

On balance, it could be said that the Court is well-versed in multi-state investigations, having already considered, albeit in contexts different to enforced disappearance, issues of information sharing whereby the Court seeks to balance important, competing principles of national security. Further, in the case of investigations under the auspices of international agencies, the Court has clearly stated that these mechanisms may not necessarily satisfy the duty to an effective investigation. On the subject of remedies, the European Court has declarative and pecuniary powers, but - as outlined above - is giving guidance particularly on the implementation of judgments that transcend borders and require state cooperation.

We therefore conclude that the European Court of Human Rights is displaying an increasing openness to victims' rights in the context of the right to the truth. There is a judicial willingness to increase the normative force of the investigative duty and to accept jurisprudential opportunities for development, as indicated in the case law on a legal duty of

cooperation. But in both this area and the somewhat uncertain law on extraterritorial jurisdiction, the Court must keep alignment with the rule of law. A focus on victims' interests and obtaining knowledge, understanding and disclosure, needs to work with, whilst also testing, the restraints of sovereignty and national interest that are inherent in the legal frameworks of cooperation that the Court sees as structuring and limiting any duty of transnational cooperation. In, for example, the case law on jurisdiction and cooperation, it is increasingly from those existing legal frameworks that the Court finds its authority to advance the norms of the right to the truth.

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[1] Council of Europe Commissioner for Human Rights, 'Missing Persons and Victims of Enforced Disappearance in Europe', Issue Paper (2016). Of course, enforced disappearances as such occur across the world with Inter-American Court of Human Rights contributions amply discussed (e.g. Gabriella Citroni, 'The contribution of the Inter-American Court of Human Rights and other international human rights bodies to the struggle against enforced disappearance', in *The Inter-American Court of Human Rights: Theory and Practice, Present and Future*, ed. Yves Haeck, Oswaldo Ruiz-Chiriboga, Clara Burbano Herrera (Intersentia, 2015) 379-403).

[2] E.g. ECtHR, *Murdalovy v Russia* app. 51933/08, judgment of 31 March 2020.

[3] ECtHR, *Aslakhanova v Russia* app. 2944/06, judgment of 18 December 2012, para. 65-68.

[4] *Al Nashiri v Poland* app. 28761/11, judgment of 24 July 2014, para. 390

[5] The August 2020 report of the working group dedicates sections to the issue (UNGA, 'Report of the Working Group on Enforced Disappearances on standards and public policies for an effective investigation of enforced disappearances' (7 August 2020) UN Doc A/HRC/45/13/Add.3, paras. 87-89 and 136-140). See also report on Libya suggesting hundreds of migrants remaining unaccounted for and held in human rights infringing detention centres (UNSC, 'Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011)' (8 March 2021) UN Doc S/2021/229, para. 42.

[6] Issues of state co-operation relating to Article 2 ECtHR may arise in respect of effective investigations into alleged system failures regarding the Covid-19 pandemic. See Paul Bowen, 'Learning lessons the hard way – Article 2 duties to investigate the Government's response to the Covid-19 pandemic' (29 April 2020), https://ukconstitutionallaw.org/2020/04/29/paul-bowen-qc-learning-lessons-the-hard-way-article-2-duties-to-investigate-the-governments-response-to-the-covid-19-pandemic/ (accessed 18 November 2020).

[7] Melanie Klinkner and Howard Davis, 'The right to the truth at the European Court of Human Rights', in *The Right to the Truth* (Routledge, 2020); James Sweeney, 'The Elusive Right to Truth in Transitional Human Rights Jurisprudence', *International and Comparative Law Quarterly* 353, (2018) 67(2) Part V.

[8] E.g. ECtHR, *Aslakhanova v Russia* app. 2944/06, judgment of 18 December 2012, para. 121.

[9] E.g. ECtHR, *Da Silva v United Kingdom* (app. 5878/08 Grand Chamber judgment of 30 March 2016 (not an enforced disappearance case) paras. 229-239; followed in *Kukhalashvili and others v Georgia,* app. 8938/07 Judgment of 2 April 2020.

[10] ECtHR, V*arnava v Cyprus* app. 16064/90 Grand Chamber Judgment of 18 September 2009 para. 186

[11] See ECtHR, *Janowiec v Russia* app. 55508/07 Grand Chamber judgment of 21 October 2013, para. 141 *passim*, for discussion of this complex point.

[12] E.g. ECtHR, *El Masri v Former Yugoslav Republic of Macedonia* app. 39630/09 Grand Chamber Judgment of 13 December 2012, paras. 151-152, concerning rendition; and *Ukraine v Russia (Crimea)* app. 20958/14 Grand Chamber decision of 16 December 2020, concerning Russia's annexation of Crimea, paras 249, 254-258. In *Baka v Hungary* app. 20261/12 Grand Chamber Judgment of 23 June 2016, this approach to evidence, evaluation and proof was endorsed more generally (see para. 143).

[13] E.g. ECtHR, *Varnava v Cyprus* app. 16064/90 Grand Chamber Judgment of 18 September 2009 para. 200.

[14] *Al-Skeini v United Kingdom* app. 55721/07 Grand Chamber judgment of 7 July 2011, para 166.

[15] In *Hanan v Germany* app 4871/16 Grand Chamber judgment of 16 February 2021, for example, the domestic investigation satisfied Article 2 even though it was unable to ascertain the full number of deaths (paras 25 and 218).

[16] Geneva Conventions, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (adopted 8 June 1977, entered into force 7 December 1979) Article 32, 1125 UNTS 17512.

[17] Article 24 (2) of the International Convention for the Protection of All Persons from Enforced Disappearance (adopted 12 January 2007 entered into force 23 December 2010) UN Doc A/RES/61/177 (20 December 2006)

[18] Alice Panepinto 'The right to the truth in international law: The significance of Strasbourg's contributions' (2017) 37 (4) *Legal Studies* 739, 761.

[19] In the context of enforced disappearance see ECtHR, *Janowieck v Russia* app. 55508/07 Grand Chamber judgment of 21 October 2013, para. 17 and see note 11, above.

[20] The European test requires proof of a close relationship and, being based on the agony of uncertainty, may apply only to disappearances and not to known deaths. It has been criticised on this ground (J.A. *Sweeney* 'The Elusive Right to Truth in Transitional Human Rights Jurisprudence' *International and Comparative Law Quarterly*, Vol. 67, Issue 2 (April 2018), pp. 353-388 ) and may be less generous than the Inter-American Court (see, for example, *La Cantuta v Peru* judgment of November 29 2006, para 125 (a)-(f)).

[21] ECtHR, *Kukhalashvili and others v Georgia,* app. 8938/07 Judgment of 2 April 2020; see paras. 134 and 135 on the involvement of the deceased's next of kin.

[22] Likewise the Inter-American Court of Human Rights largely grounds a duty to investigate on the effective judicial protection of rights (and, unlike in the ECtHR, Article 25 of the Inter-American

Court of Human Rights makes judicial protection an express right); e.g. IACHR, *Bámaca-Velásquez v Guatamala* Series C 70 Judgment on Merits of 25 November 2000, para. 30.

[23] Most famously in ECtHR, *El Masri* v *the Former Yugloslav Republic of Macedonia*, app. 39630/09 Grand Chamber judgment of 13 December 2012, para. 191.

[24] E.g. ECtHR, *Husayn v Poland,* app. 7511/13 judgment of 24 July 2014, para. 489; see also *Al Nashiri v Poland*, app. 28761/11, judgment of 24 July 2014, para. 495.

[25] See the joint concurring opinion by Judges Casadevall and López Guerra in ECtHR, *El Masri,* considering the Court's suggestion of a separate analysis by reference to the right to the truth not to be necessary.

[26] As with the partly dissenting opinions by Judges Ziemele *et al*, in ECtHR, *Janowiec v Russia* app. 55508/07 Grand Chamber judgment of 21 October 2013, which sought to stretch the Court's own principles for determining its jurisdiction *ratione temporis*, in order to impose an investigative duty on Russia in respect of the Katyn Massacres of 1940.

[27] United Nations Committee on Enforced Disappearances (UNCED), 'Guiding principles for the search for disappeared persons' (8 May 2019) UN Doc CED/C7 (hereinafter 'Guiding principles'). Principle 3 (4) expressly states the approach should 'promote cooperation and collaboration among all State bodies and also with other States and international agencies'. See also UNGA, 'Report of the Working Group on Enforced Disappearances on standards and public policies for an effective investigation of enforced disappearances' (7 August 2020) UN Doc A/HRC/45/13/Add.3, paras. 57-59.

[28] ECtHR, *Aslakhanova v Russia* app. 2944/06, judgment of 18 December 2012, para. 61.

[29] Office of the United Nations High Commissioner for Human Rights, Enforced or Involuntary Disappearance, (Factsheet 6/Rev.3, July 2009) www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf; Cf. the report of the independent expert (Manfred Nowack), 'Civil and Political Rights, including Questions of: Disappearances And Summary Executions' (E/CN.4/2002/71).

[30] It also establishes the Committee on Enforced Disappearances which receives and comments on reports from state parties and has powers to receive and seek solutions in individual cases including powers to visit and report on state parties where enforced disappearance is widespread. For discussion of the Convention and its history see Ioanna Pervou, 'The Convention for the Protection of All Persons from Enforced Disappearance: Moving Human Rights Protection Ahead', *European Journal of Legal Studies* (2012) 5(1) 145-171; for the situation up to 2002 see Jackson Nyamuya Maogoto, 'Now You See, Now You Don't: The Duty Of The State To Punish 'Disappearances' And Extra-Judicial Executions', *Australian International Law Journal* (2002)176-219. The systematic practice of enforced disappearance can also be an international crime (Rome Statute Article 7(1)(i) and (2)(i).

[31] Council of Europe Parliamentary Assembly Resolution 1463 (2005), referred to as part of the legal background in ECtHR, *Aslakhanova v Russia* app. 2944/06, judgment of 18 December 2012, para. 60.

[32] See Council of Europe Parliamentary Assembly Resolution 1463 (2005) para. 10.2; cf. UNCED Article 24(1) and (2); the Preamble 'affirms' the right of a victim to know the truth.

[33] *Ibid.,* para. 10.3; cf. UNCED Article 7(1), for example; the Preamble states a determination to 'combat impunity'.

[34] *Ibid.,* para. 10.4.1, cf. UNCED Article 17.

[35] Article 3 UNCED. Cf. the Rome Statute's codification of enforced disappearance as a crime against humanity which includes some non-state parties by reference to 'political organization' in Article 7(2)(i) of the Statute (Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) 2187 UNTS 3).

[36] Article 8(1) UNCED.

[37] Noted as an emerging phenomenon in the Issue Paper 'Missing Persons and Victims of Enforced Disappearance in Europe' (Council of Europe, 2016).

[38] European Parliament, 'Human rights protection and the EU external migration policy' (Resolution of 19 May 2021) Doc P9_TA(2021)0242, for example at para J.

[39] Human Rights Council, 'Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration', (28 July 2017) UN Doc A/HRC/36/39/Add.2. The 2019 'Guiding principles' explicitly make reference to migrants in the context of enforced disappearance at Principle 9. See also more recent analysis by Niamh Keady Tabbal and Itamar Mann, '"Pushbacks" as Euphemism' EJILTalk (14 April 2021) available at https://www.ejiltalk.org/pushbacks-as-euphemism/.

[40] *Khlaifia v Italy* app. 16483/12, Grand Chamber judgment of 15 December 2016.

[41] *N.D and N.T. v Spain* app. 8675/15, Grand Chamber judgment of 13 February 2020.

[42] The Rendition Programme, 'Prisoners' available at https://www.therenditionproject.org.uk/prisoners/index.html.

[43] Open Society Foundation (2013), Globalizing Torture: CIA Secret Detention and Extraordinary Rendition (Report) available at https://www.opensocietyfoundations.org/sites/default/files/globalizing-torture-20120205.pdf.

[44] *El-Masri v the former Yugoslav Republic of Macedonia*, app. 39630/09 Grand Chamber Judgment of 13 December 2012, para. 240; see also *Al Nashiri v Poland* app. 28761/11, judgment of 24 July 2014, para. 530 and *Husayn v Poland* app. 7511/13 Judgment of 24 July 2014, para. 524. Further comment includes: Patricio Galella and Carlos Espósito, 'Extraordinary Renditions in the Fight Against Terrorism. Forced Disappearances?' (2012) 9 (16) SUR international journal on human rights, 7-32; Ioanna Pervou, 'The Convention for the Protection of All Persons from Enforced Disappearance: Moving Human Rights Protection Ahead' (2012) 5(1) European Journal of Legal Studies, 145-171.

[45] E.g. *Mocanu v Romania* app. 10865/09 Grand Chamber judgment of 17 September 2014.

[46] *Janowiec v Russia* app. 55508/07 Grand Chamber judgment of 21 October 2013.

[47] Article 1 ECHR places the duty on the High Contracting Parties to secure the Convention rights of 'everyone within their jurisdiction'. UNCED, likewise and for example, makes it clear that responsibility in relation to enforced disappearance follows jurisdiction (Article 9 refers to ensuring competence for 'any territory under its jurisdiction'.

[48] See, for instance, *López Burgos v Uruguay* UNHRC Case 52/79 1981, para. 12.1. ICCPR General Comment 31 (CCPR/C/21/Rev.1/Add. 1326 May 2004) para. 10 refers to a person under the 'power or effective control' of a state being within the guarantee of the Covenant.

[49] *Al Skeini v United Kingdom* app. 55721/07 Grand Chamber judgment of 7 July 2011, paras. 131-142.

[50] *M.N. v Belgium* app. 3599/18 Grand Chamber Admissibility Decision of 5 March 2020, see paras 98-109. The Court held that there was no jurisdictional link triggering Belgium's Convention responsibilities in the case of asylum applicants who were not in territory, had no ties with Belgium and were in a country (Lebanon) over which Belgium had no control. The mere fact of the engagement of immigration officials in Belgium and of challenges to their decisions in the Belgium courts, would not establish jurisdiction for Convention purposes.

[51] In the admissibility decision *Ukraine v Russia (Crimea)* app. 20958/14 Grand Chamber decision of 16 December 2020, the fact of Russian forces on the ground undertaking military tasks (such as disarming Ukrainian troops) but having no role whatever in respect of civil administration, was sufficient to establish 'jurisdiction' in the period of the Russian take-over in Crimea (para 335).

[52] In *Ukraine v Russia (Crimea)* app. 20958/14 Grand Chamber decision of 16 December 2020, Russia was found to have jurisdiction in Crimea based on its 'control'; for Convention purposes, the Court was not required to rule on whether Russia's annexation of Crimea was lawful under international law (para 339). In this admissibility decision of a state application, the issue was general practices of violations, rather than individual's cases. In relation to Article 2, the Court found insufficient evidence of a general practice of killings (and consequently also of investigative failure) but that there was sufficient prima facie evidence of enforced disappearances and inadequate investigations thereof (see paras 398-412).

[53] *Güzelyurtlu v Turkey and Cyprus* app. 36925/07 Grand Chamber judgment of 29 January 2019, para 180.

[54] App. 36925/07 Grand Chamber judgment of 29 January 2019.

[55] App. 3599/18 Grand Chamber decision of 5 May 2020, paras 97-109.

[56] *M.N. v Belgium* app. 3599/18 Grand Chamber decision of 5 May 2020 paras 107-108 and 121-126.

[57] App. 36925/07 Grand Chamber judgment of 29 January 2019

[58] *Güzelyurtlu* paras. 190, 192, 195, and 237.

[59] App. 4871/16 Grand Chamber judgment of 16 February 2021.

[60] It is worth noting, though beyond the scope of analysis here, that The UN Human Rights Committee has weighed in on the subject of extraterritorial human rights obligations in relation to rescue activities in the Mediterranean (see *A.S. and others v Italy* UNHRC Communication No. 3043/2017 of 27 January 2021 and *A.S. and others v Malta* UNHRC Communication No 2043/2017 of 28 April 2021).

[61] *Güzelyurtlu* paras. 221 *et seq*.

[62] *Güzelyurtlu* paras. 235 and 236.

[63] European Convention on Mutual Assistance in Criminal Matters, 20 April 1959 (entered into force 12 June 1962) ETC No. 030, Article 2.

[64] App. 25965/04 judgment of 7 January 2010.

[65] See para. 244 – where a valid extradition request could be made through the embassies' staffs even in the absence of diplomatic relations.

[66] App. 35746/11, judgment of 30 January 2020.

[67] Two inadmissible Irish cases are referred to where there was little evidence of a lack of cooperation with the United Kingdom.

[68] Committee on Enforced Disappearances 'Guiding Principles for the Search for Disappeared Persons' 8th May 2019, adopted by the Committee at its sixteenth session, para. 9.3.

[69] App. 35746/11, judgment of 30 January 2020.

[70] *Ibid.*, para. 72.

[71] E.g. Inter-American Court of Human Rights, *Gomez-Lund v Brazil* Judgment Preliminary Objections, Merits, Reparations, and Costs of November 24, 2010, para. 202.

[72] The nature and identity of the 'informant' in *Hanan v Germany,* who played a critical role, is, perhaps, an example.

[73] ECtHR, *Al Nashiri v Poland* app. 28761/11, judgment of 24 July 2014, para. 365.

[74] E.g. *Al Rawi v The Security Service* [2011] UKSC 34; Secretary of State for Justice 'Justice and Security Green Paper' Cm 2011. Critical responses include from the 'Special Advocates' – available at https://adam1cor.files.wordpress.com/2012/01/js-green-paper-sas-response-16-12-11-copy.pdf; Academic commentary includes John Jackson. 'Justice, Security and the Right to a Fair Trial: Is the Use of Secret Evidence Ever Fair?' *Public Law*, (October 2013) 720-736.

[75] *Yam v Central Criminal Court* [2015] UKSC 76 - the burden is then on the Court of Human Rights to seek the information under the cooperation provision in Article 38; 'and it will then be for the United Kingdom to consider its position further' (at para. 34).

[76] Any non-repatriation of human remains and burial in unspecified locations also constitute a violation of the right to family and private life; an interference only permissible where it accords with the law, is in pursuit of a legitimate aim (such as public safety, prevention of disorder or rights and freedoms of others) and is necessary in a democratic society, see ECtHR, *Judgement: Sabanchiyeva and others v Russia*, app. 38450/05 (6 June 2013) paras. 117-134.

[77] The Inter-American Court of Human Rights goes further and stresses the need for an investigation to consider the broader context and complexities surrounding events (*The Massacres of El Mozote and other Places v El Salvador,* Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 252 (25 October 2012) para. 299) to achieve the 'most complete historical truth possible, including the determination of patterns of collective action' (*Valle Jaramillo et al. v Colombia,* Judgment on Merits, Reparations and Costs, Inter-American Court of Human Rights Series C No 192 (27 November 2008) para. 102). This is relevant particularly for promulgation of investigative results as a remedy (see section f) below.

[78] E.g. *S v United Kingdom* [2009] 48 ECtHR 50, app. 30562/04.

[79] *Varnava v Cyprus* app. 16064/90 Grand Chamber Judgment of 18 September 2009.

[80] *Varnava v Cyprus* para. 170.

[81] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

[82] *Kadi v Council of the EU* C-402/05, a complex European Union case but see paras. 285 and 303-6.

[83] See *Al-Jedda v United Kingdom* app. 27201/08 GC judgment of 7 July 2011.

[84] ACHR, article 63, gives the Inter-American Court the power to rule that the 'consequences of the breach be remedied'.

[85] In *Varnava v Cyprus* (2009), para. 222, the Court was reluctant to interfere with the discretion of the Committee of Ministers and declined to direct Turkey to hold an investigation.

[86] See Rules of the Court, 2008, Practice Directions, III Just Satisfaction, para. 23.

[87] E.g. *Abakarova v Russia* app. 16664/07 judgment of 15 October 2015, see paras. 112-114.

[88] *Tagayeva v Russia* app. 26562/07 judgment of 13 April 2017, see paras. 638-641.

[89] See generally, Linos-Alexander Sicilianos, 'The Involvement of the European Court of Human Rights in the Implementation of its Judgments: Recent Developments Under Article 46 ECHR', *Netherlands Quarterly of Human Rights* (2014) Vol.32/3: 235-262.