

MONTENEGRO – PERSONS MISSING WITHIN ARMED CONFLICT DURING THE 1990S

a review of the situation and recommendations
for improving the results of the search for the missing
and the position of their families

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Podgorica, 2021

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INTRODUCTION


The wars of the 1990s in the former Yugoslavia have had severe and long-term consequences, which Montenegro too still faces today and only to a limited degree. Also, almost all states of the former Yugoslavia face the challenge of addressing systemic violations of human rights, which is reflected in the process of building functional democratic institutions that should establish a responsible attitude towards the recent violent past. Such a relationship is inconceivable without establishing the truth about the fate of persons who are still listed as missing due to the armed conflicts of the 1990s.

The states of the region continue to owe the families of 9,969 missing persons¹ a full and impartial investigation into the circumstances under which their loved ones were killed or went missing, and they fail to carry out responsible sentences in accordance with the gravity of the crime committed.

In Montenegro, the legislative framework does not recognize the families of persons considered missing as civilian victims of war, whereas the system of reparations is flawed and discriminatory. Given the recorded activities of Montenegro in the armed conflicts during the 1990s, as well as the court-established facts indicating the role of Montenegrin citizens in these events, a proactive approach by Montenegrin institutions is crucial in determining the fate of missing persons. Victims' communities have high expectations from these institutions, which is proportional to the participation of the armed forces under the direct or indirect control of the state of Montenegro in the waged wars. Unfortunately, the disproportionate commitment of Montenegrin decision-makers and institutions to this issue remains.

The process of searching for the missing is difficult and conditioned by the political situation in the countries of the region. Although the need to find out the truth about the fate of persons who disappeared during the armed conflicts is expressed, above all, among their family members,

¹ Data from the International Committee of the Red Cross, 2021



and sporadically appears on the agenda of meetings of statesmen in the region, in practice, there are obstacles to the search for missing persons. These obstacles range from the inadequate capacities of state bodies involved in the search for missing persons, through insufficient financial resources, to a lack of political will to substantially improve regional cooperation, which also includes the determination to make the search for missing persons more efficient.

In general, there is not enough information on this issue in Montenegro, and it is also marginalized in public discourse. Therefore, this publication, as an alternative report, offers an overview of international standards and national legislation, reviewing the results and challenges of the search for missing persons during the armed conflicts in the former Yugoslavia in the 1990s, but also proposes recommendations for improving efficiency in this area.

THE SEARCH FOR MISSING PERSONS IN THE CONTEXT OF DEALING WITH THE PAST

Missing persons are all persons marked as missing as a result of international or non-international armed conflict or internal violence. ²

Some of these people were arrested, kidnapped or killed during captivity or massacres, etc, but what they have in common is that their fate or whereabouts remain unknown for a certain period or permanently and therefore have the status of missing persons. For example, there may have been situations in which they were detained in some places without means of communication or in secret places for a long period or were isolated (un) intentionally during armed conflicts by one of the warring parties.

They can be members of armed forces or groups whose fate is unknown; refugees or displaced persons without means of communication; children separated from their families while they fled armed conflict or through forced recruitment, detention or even adoption; or people who have died and whose identities have not been recorded.

Left without any knowledge of their whereabouts or destiny, tens of thousands of families face the agony of uncertainty for years, even decades, after armed conflicts. Their need to get information about whether their loved ones are alive, or dead is natural, as is the sense of uncertainty that prevents them from closing these issues until they find an answer. Further, the painful effects of an absence of their loved ones are often highlighted by a psychological, economic, social and legal problems they have to deal with, and which are often neglected or denied. For example, many of the missing men were often the sole breadwinners of the family, so their families are left without a source of income. Therefore, not

² International Red Cross Report on Missing Persons, see International Red Cross Review, Vol. 84, no. 848, December 2002, p. 823

only missing persons should be considered victims, but also all members of their families in a wider sense.³

Resolving the issue of missing persons in the former SFRY, including cases of disappearances and abductions in Kosovo and Metohija, is an important humanitarian and political issue, as resolving it largely influence the complete process of reconciliation and building multiethnic societies based on democracy, rule of law and tolerance. It is an obligation for competent authorities towards families of missing persons who have the right to know the truth about the destinies of their loved ones. Denial of information on kidnapped and missing persons is a gross violation of the human rights of their family members, while abduction and other violence are crimes for which all perpetrators must be held criminally responsible in accordance with international norms and applicable national law.

Almost thirty years after the wars that took place in the region, thousands of missing persons are still being talked about in this area. It is crucial to work on establishing the facts about all victims, as well as identifying all graves and places of suffering on the territory of each of the countries marked by the war.

According to the International Committee of the Red Cross, 34,886 people went missing between 1991 and 2001 year. Each of these missing persons has their own life story and it must be fully revealed, and it is important to maintain and commemorate the victims of enforced disappearances during armed conflicts. By building a culture of remembrance, in one part it contributes to the satisfaction of justice for the victims, but also to the strengthening of responsibility in a society that must not tolerate impunity for war crimes, because it undermines the foundation of the rule of law.

There were many examples that during the armed conflicts and the transition period, the data available to the warring parties were manipulated, and that the findings of missing persons were misused for political purposes. Those data were hidden or calculated in order to put pressure on the opposite side or so the data on crimes, due to which people disappeared, would not be disclosed. In that sense, the search for missing persons is also a complex issue that burdens the normalization of relations between the states that emerged from the disintegration of the SFRY.

³ ICRC Report, *Missing Persons and Their Families: Summary of Conclusions from the Events Prior to the International Conference of Governmental and Non-Governmental Experts (19-21 February 2003)*, p. 11, available at, www.icrc.org


MECHANISMS RELATING TO THE SEARCH FOR THE MISSING

The issue of missing persons usually involves various violations of the human rights of the missing, but also their families. When it comes to violations of the rights of missing persons, this often refers to violations of the right to security and liberty, the dignity of the person, the right to life, the right to protection from violence, degrading treatment or punishment, the right to family life and the right to recognition, etc.

These rights are guaranteed by the International Covenant on Civil and Political Rights and regional conventions such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights and the African Charter on Human and People's Rights. Some cases of missing persons are treated as specific human rights violations under certain international instruments.

The International Convention for the Protection of All Persons from Enforced Disappearance stipulates that no one shall be subjected to enforced disappearance. Forced disappearance is the arrest, detention, abduction or any other form of deprivation of liberty by state bodies, persons or groups acting under the authority, with the support or consent of the state, after which deprivation of liberty is refused to be recognized or the fate of a missing person is concealed or the place where it is located, thereby placing such a person outside the protection of the law. Thus, the Convention defines enforced disappearance as disappearance involving state actors.⁴ No exceptional circumstances, whether a state of war or the threat of war, internal political instability or other urgent circumstances, may justify enforced disappearance. In

⁴ International Convention for the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006, by the United Nations General Secretariat



addition, the Convention defines a victim of enforced disappearance as a missing person or any other person who has suffered damage as a direct result of enforced disappearance, but also that all victims have the right to know the circumstances of enforced disappearance, progress and results of the investigation. The Convention calls on the signatory states to take all appropriate measures in order to search for, find and release missing persons, or in the event of the death of a person to find and return the remains. All signatory states are obliged, within this legal system, to guarantee the victims of enforced disappearance the right to seek prompt, fair and appropriate compensation.

The United Nations Human Rights Council is of the opinion that the international community must strive to recognize to the victims of human rights violations, and their families and society, the right to the truth to the fullest extent possible.

Montenegro signed the International Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007 in Paris.⁵ In accordance with Article 9 of the Constitution of Montenegro, the provisions of the Convention form an integral part of the internal legal order, i.e. have precedence over domestic legislation and are directly applicable when relations are regulated differently from domestic legislation.

Under Article 26 of the Convention, the *Committee on Enforced Disappearances* is established, which is responsible for monitoring the implementation of the Convention. The Committee shall, inter alia, consider reports submitted by signatories on measures taken to fulfill their obligations under the Convention and make comments, opinions and recommendations.

Following the Law on Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance⁶, when submitting the instrument of confirmation Montenegro has accepted

⁵ List of international multilateral conventions to which Montenegro has acceded or is in the process of acceding, Government of Montenegro

⁶ Official Gazette of Montenegro - International Agreements, No. 8/2011

the competence of the Committee on Enforced Disappearances to receive and consider complaints from or on behalf of persons for whom it is responsible, who allege that Montenegro has violated their rights by violating this Convention. Also, in accordance with the provisions of this Law, it has recognized the competence of the Committee to receive and consider petitions in which one Contracting State claims that the other Contracting State is not fulfilling its obligations under this Convention.


Additionally, the *Rome Statute of the International Criminal Court* treats enforced disappearance as a crime against humanity. The Court was established by the Rome Statute (17 July 1998), which also prescribes crimes under the jurisdiction of the International Criminal Court, such as crimes against humanity, war crimes and aggression.

The Statute is an international treaty that is binding only on states that have given their consent to be bound by their provisions. It entered into force on 1 July 2002, when 60 states deposited their instruments of ratification, and to date the total number has grown to 111 states.

Montenegro has been a member of the Rome Statute since 2001. With the reform of criminal legislation, amendments to existing and the adoption of new laws, Montenegro has harmonized its normative framework with the substantive legal requirements of the Rome Statute. Articles 6, 7 and 8 of the Statute relating to the incrimination of genocide, crimes against humanity and war crimes have been incorporated into the Criminal Code of Montenegro.⁷ In addition to the substantive law aspect of cooperation, by ratifying the Rome Statute, Montenegro undertook to regulate procedural aspects of cooperation with the court, which was done by adopting the Law on Cooperation with the International Criminal Court in 2009, which created the normative conditions for the application of all obligations arising from the Rome Statute.

The case-law of the *European Court of Human Rights* stands firm on the matter that failure to conduct an effective investigation to clarify the

⁷ Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004 - amended and 47/2006 and "Official Gazette of the Republic of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020)



fate of missing persons is a continuation of violations of state obligations to protect the right to life, as required by Article 2 of the Convention, that is, violation of the rights of the families of the missing, pursuant to Article 3, on the prohibition of torture. The Court provides useful guidelines for approaching the problem of missing persons that can also serve as guidelines for an effective investigation that meets the standards for the protection of human rights. Namely, the Court emphasizes that an effective investigation must be formal, transparent, independent, impartial, and able to establish the circumstances of the case. Meeting these standards cannot be achieved without the participation of the judicial system, and in particular the participation of criminal courts and prosecutors.

The signatories of the *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses*, which was created under the auspices of the International Commission on Missing Persons, pledged to address the problem of missing persons as a state responsibility, and to do so explicitly to preserve lasting peace and promote cooperation and reconciliation. The aim of the Declaration is to encourage the solution of the problem of missing persons as a precondition for preserving lasting peace and promoting cooperation and reconciliation in the region. The declaration recognizes the right of families to know the fate of their loved ones who have disappeared, and calls, among other things, for governments to cooperate and exchange information that will help find and identify the missing.

International humanitarian law also obliges to find the missing. Thus, under Article 32 of the *IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, it is required that parties in conflict facilitate inquiries about persons who have disappeared as a result of hostilities. The Protocol, which is an addendum to the 1977 Geneva Convention, requires each of the parties in conflict to search for missing persons who have been reported missing by the other party. These provisions are additional universal guarantees of human rights protection.

FORCED DISAPPEARANCE AND THE ROAD TO TRUTH AND JUSTICE IN MONTENEGRO

Normative framework

More than a quarter of a century after wars in the former Yugoslavia, the story of missing persons in this area remains open. This also indicates that insufficient work is being done on establishing the facts about the victims and identifying all graves and places of suffering on the territory of each of the countries where the war took place.

According to the International Committee of the Red Cross, 34,886 people went missing between 1991 and 2001, while in Montenegro 51 are still missing, of which 39 are being searched for in Kosovo, nine in Bosnia and Herzegovina and in Croatia for three people. Each of these missing persons has their own life story and it must be fully solved.

European Commission reports for Montenegro warn that the unresolved fate of missing persons due to conflicts in the 1990s remains a humanitarian problem. It is also emphasized that efforts should be made to ensure that missing persons in Montenegro are identified as soon as possible.

Unfortunately, there are still no visible efforts to make that battles against impunity for war crimes more effective through investigation, prosecution, trial and punishment in accordance with international standards, and there is a lack of proactive disclosure of information on all actions taken, so that the public knows whether and to what extent it works to resolve the fates of the missing.

In addition to providing justice for the victims, the search for the missing is also providing justice for their families. In order for the search for the missing is effective, it is necessary to create conditions for active, independent, meaningful and sustainable involvement of families of the missing, strengthen dialogue and cooperation of competent institutions, on an impartial and non-discriminatory basis, with families and associations.

The normative framework related to resolving the issue of missing persons is not fully harmonized with international standards in Montenegro. Following

the amendments to the Criminal Code, during 2015 and 2017, enforced disappearance was not defined as a separate criminal offense, although it was recommended by international experts. The crime of enforced disappearance should be criminally punishable under the extreme weight of this act.

It should also be noted that the Criminal Code of Montenegro was applied in the war crimes trials conducted so far before Montenegrin courts, in which Chapter 35 defines criminal offenses against humanity and other goods protected by international law.⁸

Also, the status of families of missing persons in Montenegro is still not legally recognized, while in countries in the region, such as Croatia and BiH, there are laws on missing persons and their families. However, the non-existence of such a law does not diminish Montenegro's obligation to resolutely engage in the search for missing persons and should not be an argument justifying an insufficiently active approach to this issue.

In Montenegro, there is no comprehensive reparation program for the families of missing persons, not only through material compensation, but also criminal justice, the culture of remembrance through memorials, setting up memorials and establishing days of remembrance, apologies, but also a high degree of commitment to activities to prevent such crimes in the future.

Institutional framework

The Commission for Missing Persons of the Government of Montenegro was established on 7 June 2007 by the Decision of the Government of Montenegro⁹, with the mandate to resolve the issue of missing persons in armed conflicts in the former Yugoslavia. Its formation is the result of respecting the international obligations of the state of Montenegro.

⁸ Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004 - amended and 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020)

⁹ The Decision of the Government of Montenegro (Official Gazette of the Republic of Montenegro No. 25/07, "Official Gazette of Montenegro" No. 80/08, "Official Gazette of Montenegro" No. 17/11)

According to certain organizational restructurings¹⁰, **The Commission on Missing Persons** has become part of the Ministry of Labor and Social Welfare¹¹.

The assignment of the Commission is to monitor, study and determine proposals for resolving the issue of missing persons from the territory of Montenegro in the armed conflicts in the former SFRY; fulfills obligations that arise from international contracts and agreements related to resolving the issue of missing persons; coordinates the work of competent bodies and organizations in the process of searching for missing persons, exhumation and identification; cooperates with the competent authorities, families and associations of missing persons to resolve the status and humanitarian issues of their families.

The Commission consists of the President (representative of the Ministry of Labor and Social Welfare), Secretary (representative of the Ministry of Labor and Social Welfare) and members (representatives of the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Defense, Ministry of Interior, Ministry of Human and Minority Rights, Supreme State Prosecutor's Office and Red Cross of Montenegro)¹².

To implement the entrusted assignment, and bearing in mind the weight, complexity and specificity of the issues they deal with, as well as the political sensitivity of the issue, the Commission cooperates with relevant ministries, experts and forensic scientists to ensure a comprehensive, professional and systematic approach to this issue.


Furthermore, the Commission cooperates with relevant international organizations and institutions, such as the International Commission on Missing Persons (ICMP), the International Committee of the Red Cross (ICRC), UNDP, etc, and in accordance with their mandate and signed international documents.

The existence of the Commission is envisaged during the process of searching for persons listed as missing in the armed conflicts in the former Yugoslavia.

10 Conclusion of the Government of Montenegro no. 06-486/2 from 14 March 2013; Decision on termination of the Decision on the formation of the Commission for Missing Persons ("Official Gazette of Montenegro" No. 4/2015)

11 The Decision of the Ministry of Labor and Social Welfare no. 023-3/15-7 from 6 February 2015

12 Composition of the Commission for Missing Persons - <https://www.gov.me/dokumenta/8ad45e0a-bf29-45e8-bd0c-10712963e33d>



The Commission has contacts with the families of missing persons to inform them about the current state of cases and to gather new knowledge and facts that can help solve the fate of their missing members. In that context, informs families about the facts regarding the discovery of the remains of their members, provides assistance in organizing the retrieval of the remains, bears the costs of transportation and funeral. In addition, the Commission cooperates with associations of families of missing persons, provides them with material assistance and other forms of support.

To harmonize the system of work of the Commission with the standards applied in humanitarian law, cooperation was established with associations (Regional Coordination of Associations of Families of Missing Persons from the Former Yugoslavia, Initiative for RECOM) dealing with this issue from different angles in the former Yugoslavia.

According to the Annual Report of the Commission on Missing Persons, in 2019 the Commission participated in autopsies, identifications and handovers of the remains of six persons, five persons in connection with armed conflicts in the Republic of Kosovo and one in conflicts in Bosnia and Herzegovina.

For the improvement of the cooperation of the Commission with regional institutions and associations dealing with this issue, on 11 October 2019, the Protocol on Cooperation in Searching for Missing Persons was signed between the Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina.

During 2019, the Commission intensified cooperation with domestic institutions, so data were exchanged with the Ministry of Interior, the Supreme State Prosecutor's Office, the Red Cross of Montenegro and other competent bodies and organizations.

During the year, on several occasions, the Commission paid financial assistance to the families of missing persons from Kosovo that currently reside in Montenegro, and held six meetings with representatives of the Association of Families of Missing and Kidnapped from Kosovo "Božur".

The commission states in its report that has implemented all activities according with the work plan for 2019.

The Commission's 2020 annual report is not publicly available.

Establishing the facts about the fate of missing persons and prosecuting war crimes before judicial institutions in Montenegro


A proper prosecution of war crimes, reparations and building a culture of remembrance are not only obligations that the state of Montenegro and its society must fulfill because of their international partners, but also the basis for sustainable progress.

However, the process of dealing with the past is out of focus and lacks the support of political structures and academia in Montenegro. The themes of transitional justice and dealing with the past are mostly imposed and affirmed through the initiatives of the critically oriented civil sector and a small number of media. Although some progress has been made in the area of war crimes prosecution, efforts to date to establish crime facts and shed light on the truth, material and symbolic reparations for victims, and institutional reforms remain limited. Namely, very little has been done for the victims and justice for them, and all the moves that were made, declaratively in the spirit of European integration, were more a struggle for political points and keeping in power some who actively participated or supported the war in the 90s. Montenegrin society, therefore, continues to face politicized institutions that defend not public but particular interests.

So far, four convictions have been handed down in war crimes trials before Montenegrin courts, including the most recent in the Zmajević case, and three acquittals. However, in no case was command responsibility established, and the verdicts did not maintain the scale and the weight of the committed crimes.

Of the total of eight cases that ended in final court judgments, four are convicting, and in the case - Štrpci - one person was sentenced to 15 years; Klapuh - one person was sentenced to eight months and served a sentence for aiding, the other four were sentenced in absentia to 20 years and never served a sentence; Morinj - four people were sentenced two to four years in prison; Zmajević - One person sentenced to 14 years in prison for the crime of war crimes against civilians in the 1999 war in Kosovo. Acquittals were handed down in three cases - seven in the Bukovica case; in the Deportation case, nine defendants were acquitted; and in the case of Kaludžerski laz eight people.

War crimes cases would have been long and formally archived if Montenegro



had not received the benchmarks for Chapter 23 (Justice and Fundamental Rights) related to this area¹³, which led to the adoption of the War Crimes Investigation Strategy in May 2015 by the Supreme State Prosecutor's Office. The strategy calls for the battle against impunity for war crimes to be strengthened through more effective investigation, prosecution, trial and punishment in accordance with international standards. However, six years after the adoption of this document, there has been no progress in the application of international humanitarian law and international standards that would eliminate the mistakes made in previous judicial qualifications and judgments. Thus, since 2015, the Prosecutor's Office has formed eight new war crimes cases. Time has shown relatively quickly that this "positive step" was apparent, because in December 2017, seven cases were concluded by rejecting the indictment, while only one indictment was filed and proceedings were initiated before the High Court in Podgorica.

The results of war crimes proceedings indicate that judicial institutions in Montenegro have no understanding of the suffering that victims have suffered in wars of the 1990s, ie all indications are strong political pressure to make these procedures meaningless and not complete, which has its reflection on the issue of missing persons

After opening the Memorial Park to the Victims of the 1990s in Podgorica in 2011, and the naming of Srdjan Aleksić on a boulevard in Podgorica, there were no other state initiatives aimed to develop the culture of remembrance of the wars in the former Yugoslavia. State institutions have no ears for extra-institutional initiatives, such as setting up a memorial plaque to deported Bosnian refugees in Herceg Novi, which submitted and which persistently remind the NGOs.¹⁴ The absence of a state initiative to deal with the past in the form of commemorations and the erection of memorials follows the trend of ignoring the causes and consequences of the wars of the 1990s at many levels, including the education system and especially history teaching.

13 Measure 1.5. Action Plan for Chapter 23 - Judiciary and Fundamental Rights: Prosecution of War Crimes before Domestic Authorities

14 NGO Human Rights Action (HRA), Centre for Civic Education (CCE) and Center for Women's and Peace Education (ANIMA), and Aleksandar Saša Zeković, a former member of the Council for Civilian Control of Police Work

REGIONAL COOPERATION

Almost three decades since the end of the wartime events in the region, more than 10,000 people are still listed as missing, of which as many as 51 persons are from Montenegro. Insufficient work is being done to establish the facts on the victims and to identify all the graves and sites of suffering on the territory of each of the countries where the war took place, and it clearly indicates that this is not a priority of decision-makers. Therefore, the priority of all countries in the region, as an integral part of regional cooperation, should be the disclosure of the locations of mass graves, exhumations, identification and repatriation of mortal remains to the families of victims, in order to, at least, minimize the dignity of victims and partially see justice served. This undoubtedly requires intensive cooperation between the competent institutions and other actors, including the families of the victims and non-governmental organizations.

More comprehensive regional cooperation cannot be accomplished without developing and coordinating the work of the authorities in the region. The fate of the missing persons can be resolved only if government commissions stop acting as spokespersons of the interests of the ruling parties and start treating all victims as equally important, i.e. start working in the interests of the victims' families and the public. Resolving the issue of missing persons is extremely politicized and manipulated - which refers to the position that only some are victims and others are criminals and it is used for domestic daily political and pre-election needs, and does not lead to solving the fundamental problem, thus neglecting victims and their families.

Former Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, stated that the establishment of justice and reconciliation in the countries of the former Yugoslavia is impossible without ensuring justice for the victims and dealing with the war past, which should be a regional priority. In his commentary, he also states that the countries in the region have a moral and legal obligation to shed light on the fate of missing persons, bring the perpetrators of all war crimes to justice, but also continuously provide support to those who died. In that process, strong regional cooperation is necessary, which, besides the fact that some

significant steps towards effective dialogue and reconciliation between states have been made, must be constantly improved. In addition to the states, other entities play an important role, among which he pointed out the RECOM Initiative, whose goal is the establishment of facts about war crimes and assessed that this initiative has improved the awareness of people about reconciliation in the process of democratization of post-Yugoslav societies.¹⁵

Montenegro has signed several bilateral agreements with the former Yugoslav states which regulate cooperation in clarifying the fate of missing persons, and it is a signatory of the Declaration on the role of the State in addressing the issue of persons missing as a consequence of armed conflict and human rights violations.¹⁶

Treaties on cooperation and prosecution of perpetrators of war crimes, crimes against humanity and genocide, concluded between the State Prosecutor's Office of Montenegro and other prosecutor's offices in the region, are a good foundation for initiating a larger number of war crimes proceedings. The object of the agreement is direct cooperation between the prosecutors of Montenegro and Croatia, Bosnia and Herzegovina, Serbia, Kosovo, including the exchange of evidence, other documents and data, whose implementation may contribute to terminating the practice of impunity, eliminating barriers to the extradition of Montenegrin citizens in proceedings for war crimes committed in the territory of other states. Based on these agreements, the state prosecutor's offices agreed to cede to each other all cases in which there is sufficient evidence to initiate proceedings.

Still, it should be emphasized that more efficient implementation and compliance with all agreements and protocols signed so far is needed, so that the process of searching for missing persons would not stagnate, as is the case now.

15 Commentary of the Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, on the establishment of justice and reconciliation in the countries of the former Yugoslavia

16 Declaration on the role of the State in addressing the issue of persons missing as a consequence of armed conflict and human rights violations <http://www.mrs.gov.me/ResourceManager/FileDownload.aspx?rid=300103&rType=2&file=DEKLARACIJA%20O%20RJE%C5%A0AVANJU%20PITANJA%20OSOBA%20NESTALIH%20USLJED%20ORU%C5%BDANOG%20SUKOBA%20I%20POVREDA%20LJUDSKIH%20PRAVA.pdf&alphabet=cyr>


Missing Persons Group (MPG) for resolving cases of persons missing on the territory of the former SFRY

At the headquarters of the International Commission on Missing Persons (ICMP), in Hague, on 6 November 2018, presidents of the groups responsible for the search of missing persons from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serb signed the Framework Plan to Address the Issue of Persons Missing From Conflicts on the Territory of the Former Yugoslavia, which prescribes steps to improve co-operation and increase the effectiveness of the search for persons missing throughout the region. The Framework Plan is an obligation envisaged by the Declaration signed in July 2018 in London by the Chairman of the Council of Ministers of Bosnia and Herzegovina and the Prime Ministers of Kosovo, Montenegro, Serbia, Albania, Croatia, Germany, United Kingdom, Austria, Bulgaria, France, Italy, Slovenia and Poland, as a confirmation of their commitment to supporting efforts to find those persons missing as a result of the conflicts on the territory of the former SFRY.

The goal of the joint Framework Plan is to remove obstacles in finding 12,000 people who were listed as missing at the time (currently 10,025), relying on existing cooperation protocols, bilateral agreements and mechanisms for cooperation, i.e. intensifying multilateral cooperation to search for and identify persons missing as a result of the conflicts on the territory of the former Yugoslavia. It was agreed that the Plan would be implemented by the Missing Persons Group (MPG), comprising commissions responsible for search of missing persons from Montenegro, Serbia, Kosovo, the Institute for Missing Persons of Bosnia and Herzegovina and the Directorate for Detained and Missing Persons of Croatia.

In accordance with the Framework Plan, if required, members of the Group on Missing Persons (GNL) meet and exchange information relevant to resolving individual cases, and work on joint actions, under the Framework Plan¹⁷. During 2019 and 2020, several meetings were held,

17 Information on the activities of the Commission on Missing Persons in 2018, Podgorica, February 2019



working rules and procedures were adopted, as well as a general work plan for the next two years. The formation of two operational groups was agreed - one with a focus on addressing the problem of unidentified mortal remain located in mortuary facilities in the region, and the other is an operational one, which deals with the database of active cases of missing persons in the former Yugoslavia. MPG works on the exchange of information important for resolving individual cases of no name, or unidentified (NN) persons and joint actions in resolving cases.

At the meetings of the operational group for the database of active missing persons cases from conflicts on the territory of the former Yugoslavia, issues such as closing double data entries, closing cases where DNA analysis matches are reported, differences in data related to cases with the same disappearance territory, etc. were raised. At a meeting held in Pristina on 30 January 2020, MPG members from Montenegro, Kosovo and Serbia agreed to hold a trilateral meeting, supported by ICMP, in order to strengthen cooperation aimed at enabling the launch of an online regional database of active missing persons cases. Consequently, the *Database of active missing persons cases from conflicts on the territory of the former Yugoslavia* has been developed and is constantly updated, as a unique database of this kind.

Meetings of the operational group for resolving NN cases were dedicated to getting acquainted with the situation regarding unidentified mortal remains. At a meeting held in Pristina on 30 January 2020, MPG members agreed to hold a series of bilateral meetings to determine priority joint investigations and excavations of potential mass grave sites during 2020, and to include forensic examinations and biological sampling of unidentified (NN) cases of post-mortal samples to enable DNA analysis for the purpose of identifying missing persons, as well as to jointly mark the International Missing Persons Day and make a joint call for information on possible locations of mass graves and appeal to the families of the missing to provide reference genetic samples.

A particularly important segment is meeting and working with associations of families of the missing persons, which aims to enable them to be actively involved and informed about the results of efforts toward resolving cases.

The European Commission Report on Montenegro for 2020 positively

comments on the work of the Missing Persons Group: *'Good progress has been registered since the establishment of the Missing Persons Group in November 2018. This group enhanced cooperation and increased effectiveness in accounting for missing persons, including further exchanges of information on potential gravesites and excavations, launch of a public regional database, and further updates for representatives of the families of the missing persons.'*¹⁸

The Report also notes that on 28 March 2019, Bosnia and Herzegovina and Montenegro completed the draft Protocol on Cooperation in the Addressing the Issue of Missing Persons. The Government of Montenegro and the Council of Ministers of Bosnia and Herzegovina adopted the Protocol, which was later signed. Furthermore, on 6 June 2019, the institutions of Kosovo and Montenegro held a bilateral meeting to discuss, inter alia, the burial of persons missing in Kosovo, identified through the joint work of the institutions of Kosovo, Montenegro, Serbia and ICMP. The conclusion of the report states that the institutions responsible for resolving the issue of missing persons in Bosnia and Herzegovina, Montenegro, Croatia, Kosovo and Serbia are committed to working together through the MPG's mechanism.

The annual Report of the International Commission on Missing Persons (ICMP) noted the 6th Summit within the Berlin Process, during which the Missing Persons Group reported on the progress made in the implementation of the Framework Plan.

COMPARATIVE NORMATIVE VIEW

Bosnia and Herzegovina

The Law on Missing Persons of Bosnia and Herzegovina was adopted in October 2004. The subject-matter of the Law is *'the principles for improving the tracing process, the method of managing the central records, the realization of social and other rights of family members of missing persons, and other issues related to tracing missing persons'*.¹⁹

The Law defines the term missing person as *'a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict that happened on the territory of the former SFRY and applies to persons who disappeared in the period from 30 April 1991 to 14 February 1996'*.²⁰

For the sake of strengthening the tracing process of missing persons and more expedite identifications of mortal remains of missing persons, the Missing Persons Institute of Bosnia and Herzegovina was established as an independent institution. The Institute has the administrative authority to carry out duties related to the process of tracing missing persons and to issue appropriate documents.

A tracing request for a missing person is submitted to the Institute and it may be submitted by any family member of the missing person as well as by other persons or institutions, if they can provide the minimum information about the identity of the missing person. Minimum data consists of the name and surname of the person, name of one parent, place and date, or only year, of birth, supposed date and place, or only year, of disappearance and circumstances of disappearance. If the minimum required data has not been provided, the applicant shall be

19 Law on Missing Persons of Bosnia and Herzegovina, Article 1

20 Law on Missing Persons of Bosnia and Herzegovina, Article 2

contacted within a reasonable period to provide additional information.²¹

The status of a missing person is terminated on the date of identification, and the process of tracing the missing person is concluded. If a missing person is proclaimed dead, but the mortal remains have not been found, the process of tracing shall not be terminated.

The family members of missing persons, as defined in Article 2, who were supported by the missing person and who need support, are entitled to monthly financial support. However, the financial support cannot be received concurrently with support based on other grounds, but beneficiaries may choose the more favourable right. The amount of monthly financial support is 25% of the average salary paid in Bosnia and Herzegovina during the previous quarter, calculated individually for each beneficiary according to the criteria established by law. The right to financial support is terminated when: the child, adopted child, step-child, brother, or sister complete their regular education or enter into marriage; the spouse enters into marriage or common-law marriage; the beneficiary dies; d) the beneficiary finds employment; e) the beneficiary selects another more favourable right.²²

The law also prescribes other rights exercised by family members of the missing. The costs of burials of identified and unidentified persons are borne by the state authorities. Additionally, in cases when supported family members of a missing person do not realize the right to health protection on any other basis, they are entitled to health protection and other rights concerning health insurance, with the same coverage as employed individuals. Children of missing persons shall have priority in the realization of the rights to education and employment, on an equal basis.

Croatia

The Law on Missing Persons in the Homeland War regulates the protection, promotion of the rights and interests of persons missing and killed in the Homeland War for whose burial place is unknown and

21 Ibid

22 Law on Missing Persons of Bosnia and Herzegovina, Article 14

of members of their families; and the procedure, responsibility, record keeping, and other matters related to tracing, exhumation and the identification of persons missing in the Homeland War and of persons killed in the Homeland War whose burial place is unknown.²³

A person missing in the Homeland War is a person about whom family members have no news on the basis of reliable data on the disappearance in the Homeland War in the territory of the Republic of Croatia or in relation to the Homeland War, and who at the time of disappearance had Croatian nationality or had a registered permanent or temporary residence in the territory of the Republic of Croatia.²⁴ According to this Law, a missing person is also a person of foreign nationality who has the status of a Croatian Homeland War veteran and who at the time of disappearance did not have a registered permanent or temporary residence in the territory of the Republic of Croatia. Also, among the missing, the Law includes a person killed in the Homeland War whose burial place is unknown, and there are no reliable data on being killed in the Homeland War.

Persons missing in the Homeland War are presumed to be alive until their burial place is identified or until they are declared dead in accordance with the regulations.

The procedure of tracing a person missing in the Homeland War shall be launched based on the request submitted to the Ministry of Croatian War Veterans directly or through the Croatian Red Cross, International Committee of the Red Cross, Red Cross Society or Red Crescent Society, or diplomatic missions and consular offices of the Republic of Croatia. The report is filed by a family member of the missing person, while in cases where a person missing does not have any living family members, the procedure of tracing a person missing in the Homeland War may be launched by another person. Exceptionally, the procedure of tracing a person missing may also be launched by the Ministry acting ex officio on the basis of reliable data on the disappearance of a person.

The request initiating the procedure must meet some formal

23 Law on Missing Persons in the Homeland War, Article 1

24 Law on Missing Persons in the Homeland War, Article 4

requirements, i.e. a minimum data on the identity of a missing person. These are, taken cumulatively, data on the first and last names of the person missing in the Homeland War or the person killed in the Homeland War whose burial place is unknown; the first and last names of one of their parents; data on the place and date of birth or year of birth; and data on the presumed place and date of disappearance or death.²⁵ If the request does not provide the minimum data on the missing person, the Ministry shall not launch the procedure.

If the requirements have been met to launch the procedure, the Ministry shall enter such person in the Register of persons missing in the Homeland War. These official registers of the Ministry contain personal data on the missing person, data regarding the circumstances of their disappearance as well as other information relevant for tracing the missing person. The Ministry processes the collected data on the missing persons and on that basis conducts activities of field surveys, investigations and other activities within its competencies.


The procedure is completed when the missing person or his/her remains are found and the person who launched the procedure is informed about it. The precondition for the closing procedure of tracing a missing person is that person who submitted the request accepts the findings of identification findings or delivers to the Ministry a declaration on the conclusion of the tracing procedure.

Serbia

Serbia has not enacted a special law on missing persons. Thus, there is no adequate normative framework that would define the tracing process of missing persons, as well as the rights of the families of missing persons.

The Commission for Missing Persons of the Government of the Republic of Serbia is an institution that has the authority to determine the fate of missing persons. The main task of the Commission is to resolve the issue of missing persons who are listed as missing in the armed conflicts in Bosnia and Herzegovina, the Republic of Croatia and Kosovo, who are citizens of the Republic of Serbia or whose families are permanently settled in Serbia.

25 Law on Missing Persons in the Homeland War, Article 4



However, the rights of family members of missing persons are prescribed by the Law on the Rights of Civilian Invalids of War and the Law on Fundamental Rights of War Veterans, Disabled Veterans and Families of Dead Soldiers. The Law on the Rights of Civilian Invalids of War provides for the following rights – individual disability allowance; an allowance for care and assistance by another person; orthopedic allowance; medical care and financial compensation related to the realization of medical care; privileged and free of charge transport; food and accommodation fees during travel and stay in another place upon the invitation of the responsible authority; monthly allowance and reimbursement of funeral expenses.²⁶

The regulations aimed at soldiers, disabled veterans and their families are much more detailed and elaborated than the regulations of the Law on the Rights of Civilian Invalids of War, and include a somewhat larger scope of social protection, putting them in a privileged position compared to civilians.²⁷

26 Law on the Rights of Civilian Invalids of War (Official Gazette of RS", No. 52/96), Article 4

27 The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war, HLC, 2017, p. 13.

CONCLUSIONS AND RECOMMENDATIONS

It has been almost three decades since the armed conflicts in the former SFRY, in which Montenegro also played a role. That time, unfortunately, has passed in the absence of decisive confrontation with the heritage of massive human rights violations in the past. However, the consequences of the war past, as well as the consequences of not dealing with the past, cannot and must not be ignored.


The number of 51 missing persons from Montenegro who are still being searched for, ie almost ten thousand families throughout the former Yugoslavia who are still waiting for answers about the fate of their loved ones, oblige the countries of the region to dedicate themselves to this part of the recent past.

In that context, Montenegro is expected to improve all mechanisms that could lead to the discovery of these missing persons. The current inefficiency in the search for missing persons is a reflection of a lack of political will to put this issue among the priorities, which has its consequence in the general lack of information of the public. Thus, about 70% of Montenegrin citizens do not know how to estimate how many citizens of Montenegro are still listed as missing during the wars of the 90s, and only 13% have approximate knowledge stating that it is over 60 people²⁸.

Also, insufficient capacities of institutions are evident in search of the missing people, the passivity of law enforcement bodies in search of missing persons and prosecution of those responsible, prevention of access to state archives relevant to the process of searching for missing persons, etc.

The current dynamic of shedding light on the fate of missing persons is not in line with the humanitarian dimension of this problem. In addition, over time the chances of finding missing persons decrease, and one of the biggest

28 CCE research <http://media.cgo-cce.org/2021/05/CGO-Tranziciona-pravda-izvjestaj-FF.pdf>



problems in this process is the lack of information. Therefore, the search for missing persons needs to be approached holistically and decisively, engaging all available mechanisms, with continuous improvement of regional cooperation in the process of searching for missing persons, both at the level of governments and judicial bodies and civil society organizations.

Precisely, it is necessary to:

- 1.** intensify work on establishing the facts about all the victims and identifying all the graves and places of suffering on the territory of each country;
- 2.** assign the status of civilian victims of war to all family members missing during the armed conflicts in the former SFRY;
- 3.** adopt a purposeful reparations program for all victims of enforced disappearances, ie family members missing during the armed conflict in the former Yugoslavia;
- 4.** depoliticize the process of searching for missing persons and prove the political will to solve this problem;
- 5.** more efficiently implement all signed agreements and protocols between states;
- 6.** provide wider access to the regional list of missing persons for the territory of the former Yugoslavia;
- 7.** opening all archives whose material could contribute to help resolve the fate of missing persons;
- 8.** to establish the facts about the fate of missing persons as one of the priorities in the detection and prosecution of war crimes before the competent judicial authorities;
- 9.** to improve the cooperation of all institutions in Montenegro and create an interdisciplinary team whose competence is to assist the responsible authority in the search for missing persons;
- 10.** make and implement the law on missing persons, but also improve existing legal solutions that will improve the status of families of missing persons;
- 11.** criminalize enforced disappearance as a separate criminal offense;
- 12.** strengthen the capacities of all institutions of the state of Montenegro in whose jurisdiction is the search for the missing.



