



THE EFFICIENCY OF MECHANISMS OF INSTITUTIONS OF SERBIA AND KOSOVO IN FINDING MISSING PERSONS FROM THE WAR IN KOSOVO BETWEEN 2016 AND 2020



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The efficiency of mechanisms of institutions of Serbia and Kosovo in finding missing persons from the war in Kosovo between 2016 and 2020

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ABBREVIATIONS

EC	European Commission
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
HLC	Humanitarian Law Centre
MPG	Missing Persons Group
HRAP	Human Rights Advisory Panel
KFOR	NATO Mission in Kosovo
KiM	Kosovo and Metohija
ICRC	International Committee of the Red Cross
ICMP	International Commission on Missing Persons
ICTY	International Criminal Tribunal for the former Yugoslavia
MD	Ministry of Defence
Mtbr. YA	Motorized Brigade of the Yugoslav Army
MI	Ministry of Interior
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
KLA	Kosovo Liberation Army
RECOM	Regional commission for the establishment of facts about war crimes and other serious violations of human rights committed in the former Yugoslavia from January 1, 1991 until December 31, 2001
USA	United States of America
SFRY	Socialist Federal Republic of Yugoslavia
FRY	Federal Republic of Yugoslavia
SPRK	Special Prosecution Office of Kosovo
KSC	Kosovo Specialist Chambers
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo

INTRODUCTION

After September 2020, when the Washington Agreement was reached, and the EU-facilitated negotiations between Serbia and Kosovo in Brussels renewed, resolving enforced disappearances from the Kosovo conflict, as well as the post-conflict period (1998-2000), was after many years, at least declaratively, very high on the political agendas of the executive authorities of Serbia and Kosovo.

According to the International Committee of the Red Cross (ICRC), more than 6,000 cases of missing persons during the war in Kosovo were registered after the war, at the request of family members. In the meantime, the fate of the majority has been clarified, but nothing is known about more than 1,600 people yet.

On the occasion of the International Day of the Disappeared at the end of August 2020, the Association of Kosmet Victims from Belgrade and the Missing Persons Resource Centre from Priština organized press conferences in Belgrade and in Priština entitled “The Missing Must not Remain a Number – They Have Names”. At both press conferences in Belgrade and Priština, Associations of families of missing Serbs and Albanians stated that both countries must open war archives and reveal information about people who are still listed as missing in the war in Kosovo (1998-1999). “There is no progress in any society as long as there are secret tombs and unexcavated bones” said Nataša Šćepanović, president of the Association of Kosmet Victims.

Having in mind the appeals of the families of the missing and civil society to address the issue of the missing from a humanitarian perspective, as well as a frequent abuse of the issue for daily political purposes, the Youth Initiative for Human Rights in Serbia (YIHR) and the New Social Initiative (NSI), with support and coordination of the Working Group for Chapter 35 of the National Convention on the EU in Serbia, mapped the problem of inconsistent data on missing persons available to the Government of Serbia and the Government of Kosovo, as well as insufficiently developed cooperation between institutions of the two governments that would lead to faster and more efficient finding of missing persons.

As a result, this is an analysis of the efficiency of mechanisms for resolving the issue of missing persons (legislative solutions, collecting data on missing persons - archives, establishing facts about missing persons through war crimes trials, grave exhumations) available to Serbian and Kosovo institutions in the period from 1 January 2016 to 31 December 2020. Finally, in addition to the analysis of the efficiency of mechanisms in both countries, this document also contains findings of international state and non-state organizations, data on forms of cooperation between Serbia and Kosovo in resolving the issue of missing persons, as well as recommendations for the work of both governments, which can, in our opinion, lead to a more efficient and humane solution to the issue of the missing than it has been the case so far.

LEGISLATIVE FRAMEWORKS AND INSTITUTIONS IN CHARGE OF SOLVING THE ISSUES ABOUT MISSING PERSONS

Legal framework – Serbia

The Republic of Serbia does not have a single law on missing persons that would systematically and comprehensively regulate the competences of state bodies and their communication, define the concept of enforced disappearance, missing person and victim, but also the issue of reparations, i.e., compensation for missing persons' families. At the same time, Serbia has signed and ratified several international documents dealing with the issue of missing persons and thus committed to resolving the issue of their disappearance. Serbian legislation also contains provisions relevant to resolving the issue of missing persons in a number of different laws.

The Republic of Serbia has ratified the [Geneva Convention relative to the Protection of Civilian Persons in Time of War](#), i.e., the Fourth Geneva Convention of 1949 and the [Additional Protocol 1 to the Geneva Conventions](#) of 1977. They emphasize the right of families to know the fate of their relatives (Article 32 of the Protocol), but also impose the obligation of the parties to the conflict to search for the persons who have been reported missing by an adverse party (Article 33 of the Protocol).

Serbia also ratified the 1950 [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) by law. Article 3 of the European Convention stipulates the prohibition of torture, inhuman or degrading treatment or punishment, and it has been developed through the practice of the European Court of Human Rights, which subsumes enforced disappearances under this article.¹

Article 7 of the [International Covenant on Civil and Political Rights](#), ratified by Serbia in 1971, which stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, is also important in relation to the prohibition of torture and inhuman treatment. As in the case of the European Convention, the International Covenant is reaffirmed through the practice of the United Nations Human Rights Committee.

In 2011, the Republic of Serbia ratified and incorporated into its legal system another United Nations convention - the [Convention for the Protection of All Persons from](#)

¹ Varnava i ostali protiv Turske, presuda Evropskog suda za ljudska prava od 18. septembra 2009. godine: <https://hudoc.echr.coe.int/eng#{%22display%22:%20%221,%22languageisocode%22:%22BOS%22,%22appno%22:%2216064/90%22,%2216065/90%22,%2216066/90%22,%2216068/90%22,%2216069/90%22,%2216070/90%22,%2216071/90%22,%2216072/90%22,%2216073/90%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22itemid%22:%22001-117975%22}}>

Enforced Disappearance. Article 1 of the Convention states that no one shall be subjected to enforced disappearance, and that even a state of war, the threat of war, or internal political instability are not a justification for enforced disappearance. Article 2 is particularly important because it explains that “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Then, Article 24 of the Convention explains the term “victim” and states that it means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance. It is further stated that each State Party shall ensure in its legal system the right to obtain reparation and adequate compensation - material, moral, etc.

In 2014, Angela Merkel, the chancellor of Germany, launched the Berlin Process, a diplomatic initiative that seeks to improve regional cooperation between the countries of the Western Balkans, but also the process of their accession to the European Union. Within the Berlin Process, summits of the countries of the Western Balkans are organized on an annual basis. At the summit in 2018 in London, the Joint Declaration on Missing Persons was signed, and a few months later, the Framework Plan to Address the Issue of Persons Missing from Conflicts on the Territory of the Former Yugoslavia.² The declaration emphasizes the need to intensify work on finding and identifying missing persons, depoliticize the process, and actively engage national institutions. The importance of opening the archives is also emphasized, and the parts concerning the families of missing persons are of special importance. Family members of the missing persons must be able to exercise their rights in accordance with international and national laws, and their active participation in the search process is crucial. The Framework Plan builds on the Declaration and emphasizes the need for the exchange of information between the signatory countries, greater involvement of families in the search process, but also the joint celebration of August 30, the International Day of the Disappeared.

In April 2020, Miroslav Lajčak was appointed EU Special Representative for the Belgrade-Priština Dialogue, a diplomat who was expected to restart negotiations interrupted by the tax increase that Kosovo introduced on goods from Serbia in November 2018. Negotiations have been launched, and the issue of missing persons has been in focus.³ Accelerating the work on solving the problem of missing persons is a

² Treći izveštaj o sprovođenju nacionalne strategije za procesuiranje ratnih zločina, Fond za humanitarno pravo, Beograd, decembar 2018, p. 43-44: http://www.hlc-rdc.org/wp-content/uploads/2018/12/Treci_izvestaj_o_sprovođenju_Nacionalne_strategije_za_procesuiranje_ratnih_zlocina.pdf;

³ Lajčak: Lideri Srbije i Kosova postigli pun napredak u pregovorima, N1, 07. septembar 2020: <https://rs.n1info.com/vesti/a637321-miroslav-lajcak-dijalog-beograd-priština-brisel/>;

point that was included in the [Washington Agreement](#), which was signed in September 2020 by the President of Serbia Aleksandar Vučić, the Prime Minister of Kosovo Avdullah Hoti, and the U.S. President Donald Trump.

In the Article 25 of the [Constitution of the Republic of Serbia](#), Serbian Legislation prescribes the inviolability of physical and mental integrity, as well as the fact that nobody can be subjected to torture, inhuman or degrading treatment or punishment, while Article 35 defines the right to rehabilitation and compensation of damage, material or non-material, inflicted on him by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government.

[The Law of Contract and Torts](#) does not recognize the right of relatives to compensation for enforced disappearances, but exclusively for the death of a close person. Accordingly, Article 200 states that the court may award monetary compensation for physical or mental pain suffered due to reduction of life activities, for becoming disfigured, for offended reputation, honour, freedom, or rights of personality, for death of a close person, as well as for fear suffered.

[The Law on the Rights of Veterans, War Invalids, Civilian War Invalids and Members of Their Families](#), passed in March 2020, recognizes missing persons as civilian victims of war in Article 23, but does not state whether it is necessary for families to declare their missing relatives dead in non-litigious proceedings, as was previously the case.

As domestic law has so far not provided damage compensation for enforced disappearances, and because, despite binding judgments of the European Court of Human Rights and the United Nations Human Rights Committee (UN), cases of enforced disappearances have remained without positive outcomes, the families of the missing persons were forced to seek justice before international courts.

Institutions in charge of the issues of missing persons in Serbia

[The Commission for Missing Persons of the Government of the Republic of Serbia](#) was established with the aim of resolving the issue of missing persons in connection with the wars that took place in the territory of the former Yugoslavia during the 1990s. The Commission collects data on the missing and communicates them to the public, fulfills the obligations of international agreements, coordinates the work of the competent authorities and cooperates with the families of the missing and their associations. The Commission for Missing Persons consists of the President and 11 members and the Expert Service. The President of the Commission, since its establishment in 2006, has been Veljko Odalović, Secretary General of the Ministry of Foreign Affairs, and the

members are representatives of the Office for the War Crimes Prosecutor, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Interior, Ministry of State Administration and Local Self-Government, Ministry of Justice, Office for Kosovo and Metohija, Commissariat for Refugees and Migration, Serbian Red Cross, Ministry of Finance and the Ministry of Labour, Employment, Veteran and Social Affairs.⁴

Professional assistance is provided to the Commission for Missing Persons by the [Commissariat for Refugees and Migration of the Republic of Serbia](#), within which a special [Department for Missing Persons](#) has been established, which performs administrative and technical tasks in the process of searching for missing persons during armed conflicts. The Department for Missing Persons keeps a unique record of missing persons and exhumed remains (identified and unidentified), takes care of the costs of exhumation, identification, and transport, allocates funds to associations of families of missing persons and cooperates with other countries and international organizations. Two more specific units have been formed within the Department for Missing Persons - the Group for Missing Persons in the Autonomous Province of Kosovo and Metohija (KiM) and the Group for Missing Persons in the Territory of the Former Socialist Federal Republic of Yugoslavia (SFRY).⁵

The Commission for Missing Persons has a representative in the [Working Group on Missing and Kidnapped Persons in Kosovo and Metohija](#) established in 2004 in the context of UN Security Council Resolution 1244. The working group consists of four representatives of each Belgrade and Priština, it is chaired by ICRC, and observers include representatives of the EU, NATO, OSCE, International Commission on Missing Persons (ICMP) and associations of families of the missing. The working group cooperates with UNMIK, EULEX and institutions in Kosovo.

In 2016, the Committee for Kosovo and Metohija of the Assembly of the Republic of Serbia, in charge of proposing laws and other acts and monitoring the implementation of resolutions and declarations important for the Kosovo issue, established the [Working Group to gather facts and evidence in clarifying crimes against Serbs and other national communities in Kosovo and Metohija](#). The working group is chaired by the MP of the Serbian Progressive Party (SNS), Milovan Drecun, president of the Committee for Kosovo and Metohija, and its members are also representatives of the Commission for Missing Persons, Office for Kosovo and Metohija, Office of the War Crimes Prosecutor and Ministry of Interior.

⁴ Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2019. godine, Beograd, februar 2020, p. 3: <http://www.kznj.gov.rs/latinica/dokumenta.php>;

⁵ Informator o radu, Komesarijat za izbeglice i migracije, januar 2021, str. 10-12: <https://kirs.gov.rs/media/uploads/INFORMATOR%20JANUAR%202021-01-2021-converted.pdf>;

Legal framework – Kosovo

Article 22 of the [Constitution of Kosovo](#) has taken over some of the most important international instruments for the protection of human rights, including the [European Convention on Human Rights](#), which is directly applicable in Kosovo and has precedence, in case of conflict, over all legal provisions and other acts of Kosovo's public institutions. Consequently, Kosovo is also obliged to apply the case law of the European Court of Human Rights. In accordance with this Convention, families of the missing have the right to information about the fate and residence of their loved ones, which derives from Articles 2, 3, 5 and 8 of the Convention. The Kosovo authorities are therefore obliged to make all reasonable efforts to provide them with this information.

In September 2011, the [Law on Missing Persons](#) entered into force in Kosovo. This law aims to protect the rights and interests of the missing and their families, in particular the right of families to be informed of the fate of missing persons who disappeared between 1 January 1998 and 31 December 2000, as a result of the armed conflict in Kosovo. Everyone has the right to know the fate of the missing family member(s), including the place where they were found or, if they died, the circumstances of their death, the place of burial, as well as the right to retrieve their remains. In addition, the law establishes the competencies of the Commission for Missing Persons, which is defined in Article 8 of the Law as “a governmental body which heads, supervises and coordinates the activities with local and international institutions and other stakeholders with regards to clarification of the fate of missing persons, regardless their ethnic background, religion or military or civil status”.

Article 13 stipulates that the Government's Commission will establish and maintain a Central Register of Missing Persons - the main database of data collected from all available sources that can be used to find their identity, place, and circumstances of disappearance and to exchange them with other institutions in Kosovo when needed for the purpose of searching, identifying missing persons or finding the remains. The law also contains provisions on who has the right to get the data from the central register and how personal data will be processed and treated.

In July 2012, the Government of Kosovo adopted the [Regulation on the Work of the Governmental Commission for Missing Persons](#), which defines the responsibilities, scope, rules and procedures of this commission, as well as the organization of the administrative unit it includes.

[The Law on Forensic Medicine](#), which entered into force in April 2016, stipulates the establishment of the Institute of Forensic Medicine under the auspices of the Ministry of Justice of Kosovo. Article 15 of this law stipulates, inter alia, that the Institute is

responsible for “searching, locating and exhuming, as well as determining the fate, identifying and handing over the remains of missing persons” associated with the armed conflict in Kosovo. In addition, the Institute is responsible for “maintaining contacts with the families of the missing and cooperating with local and foreign organizations and institutions, which are involved in the process of clarifying the fate of missing persons.”

[The Law on the Status and Rights of Fallen Soldiers, Disabled Veterans, Veterans, Members of the Kosovo Liberation Army, Civilian Victims and their Families](#), adopted in December 2011, includes the rights and benefits for close family members of the missing in the period between 27 February 1998 and 20 June 1999. The immediate family of the missing person exercises all rights as well as the immediate family members of the civilian victim of war⁶ determined by this law, while the immediate family of the missing member of the Kosovo Liberation Army (KLA) enjoys additional rights. Thus, according to Article 13 of the Law, members of the immediate family of a missing person are entitled to a family “civil war pension”, health care, primary and secondary, free services in public health institutions, exemption from property tax if the immediate family is in difficult material situation, cheap and reduced electricity consumption tariff, if the immediate family is facing a difficult economic situation.

In addition, according to Article 6 of the Law, immediate family of civilian victims of war (with whom members of the immediate family of missing persons are made equal according to this law) exercise the right to housing care if they are in a difficult financial situation. The law stipulates that the Government of Kosovo will make efforts to provide family care by building collective buildings for social housing. However, the families of missing KLA members who do not have their housing issue resolved have an advantage in exercising this right. On the other hand, additional benefits are provided for family members of missing KLA members.

The costs of funeral, transport and military honours are reimbursed by the Ministry of Labour and Social Welfare and military honours after the procedure of exhumation and identification of a missing member of the KLA. In addition to primary and secondary, tertiary health care in public health institutions, scholarships for secondary and university education, priority for enrolment and admission in public educational institutions, free accommodation in student dormitories, exemption from administrative payments at public universities are also provided for this category, as well as exemption from payment of court, administrative and public fees, free accommodation in nursing homes, exemption from payment in public city and intercity transportation (Article 8).

⁶ According to this Law, Civilian Victim of War is the person who has died or got wounded by the “enemy forces”, and died later in the period between 27 February 1998 and 20 June 1999, as well as the persons who have suffered as a consequence of the war within three years after the war ended from mines and other explosive devices left out from the war.

Institutions in charge of the issues of missing persons in Kosovo

The Commission for Missing Persons of the Government of Kosovo is a body that, in accordance with its legal powers, heads, supervises and coordinates activities with local and international institutions and other stakeholders with regards to clarification of the fate of missing persons, regardless their ethnic background, religion or military or civil status.⁷ The Law on Missing Persons envisages the structure of the commission consisting of representatives of the Prime Minister's Office, the Institute of Forensic Medicine, ministries, as well as associations of families of the missing. The chairman of the Commission and the deputy are appointed by the Prime Minister of Kosovo, and the deputy should be from the minority communities in Kosovo.

A request for search is submitted to the Commission, which decides on it and informs the families about the results. The search for a missing person is considered complete when the missing person is found or when his or her remains are identified. In addition, the Commission covers funeral expenses following the identification of the remains of missing persons, protects the rights and interests of missing persons and their family members, coordinates data collection activities, establishes a Central Register of Missing Persons and implements awareness raising initiatives and support related to missing persons. The Commission informs the family members of the missing persons and cooperates with their associations, but also informs the public about its findings.⁸ The Commission carries out its activities in full cooperation with local and international institutions and organizations, the Public Prosecutor's Office, courts, and other bodies authorized by law to collect data on missing persons. It is also responsible for cooperation with relevant institutions of countries in the region.⁹

The Institute of Forensic Medicine is a public institution under the auspices of the Ministry of Justice of Kosovo, responsible for providing expert services in the field of forensic medicine and forensic investigations of death, including the exhumation of remains related to the armed conflict in Kosovo. Thus, according to Article 15 of the Law on Forensic Medicine, the Institute of Forensic Medicine is also responsible for "searching, locating and exhuming, as well as determining the fate, identifying and handing over the remains of missing persons" associated with the armed conflict in Kosovo, as well as "maintaining contacts with the families of the missing and cooperating with local and foreign organizations and institutions, which are involved in the process of clarifying the fate of the missing persons."

⁷ Zakon br. 04/L-23 o nestalim licima, član 8: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2765>;

⁸ Zakon br. 04/L-23 o nestalim licima, član 6. tačka 5. i član 10: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2765>;

⁹ Zakon br. 04/L-23 o nestalim licima, član 11: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2765>;

[The European Union Rule of Law Mission in Kosovo \(EULEX\)](#) plays a significant role in the work of the Institute of Forensic Medicine. Article 18 of the Law on Forensic Medicine stipulates that EULEX experts will work together with the Kosovo authorities to increase their capacity to ensure that the Institute of Forensic Medicine has “sufficiently trained experts capable of providing forensic expertise, thus meeting international standards and best European practices”.

EULEX staff is incorporated into the Institute of Forensic Medicine, the Deputy Director is from the EULEX mission, as well as staff assisting the Institute in forensic anthropology and archaeology, forensic pathology, and crime scene investigation. The Institute maintains contact with the families of the missing and is responsible for locating, exhuming, identifying, and determining the fate of the missing, as well as for handing over human remains. After obtaining information on potential graves, and after confirming their accuracy, EULEX experts make an investigative report stating the reasons for excavations at specific sites and the expected results. That report is further forwarded to the prosecutor, who evaluates the information and possibly makes a decision on conducting excavations at a certain location. Following the prosecutor’s order, EULEX is allowed to work in the field.¹⁰

[The Law on the Special Prosecution Office of the Republic of Kosovo](#), adopted in June 2008, established the Special Prosecution Office of Kosovo (SPRK) as a permanent, specialized prosecutorial office within the Office of the State Prosecutor. Article 5 of the Law stipulates that the Prosecution has, inter alia, the exclusive competence to investigate and prosecute crimes against humanity, war crimes in serious violation of the Geneva Conventions, war crimes in serious violations of laws and customs applicable in international armed conflict, war crimes in serious violation of Article 3 Common to the Geneva Convention and war crimes in serious violation of laws and customs applicable in armed conflict not of an international character. Therefore, it is responsible for investigating cases of enforced disappearances.

With the arrival of the EULEX mission in Kosovo, the investigation and prosecution of criminal offenses, which fall under the exclusive competence of SPRK, fell under the jurisdiction of the prosecutors of this mission.¹¹ With the change of mandate of the EULEX mission in Kosovo in 2014, the process of transferring authority from EULEX to local institutions began. In May that year, jurisdiction to obtain court orders for the exhumation of missing persons on the territory of Kosovo was transferred from EULEX to SPRK, and in 2018 it had exclusive jurisdiction to investigate and prosecute missing

¹⁰ EULEX Kosovo/Institute of Forensic Medicine (IFM): <http://www.shortcutmedia.net/portfolio/eulex-kosovo-institute-of-forensic-medicine-ifm/>;

¹¹ Zakon br. 03/L-053 o nadležnostima, odabiru i raspodeli sudskih predmeta i tužiocima EULEX-a misije na Kosovu, član 8: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2527>;

persons. The Special Prosecution Office is in charge of every exhumation of missing persons in Kosovo.

EULEX has handed over about 900 cases of war crimes and other violations of international humanitarian law to SPRK, as well as nearly 2,000 cases related to abduction or disappearance of persons during and after the armed conflict in Kosovo.¹²

The Committee for Human Rights, Gender Equality, Missing Persons and Petitions is a functional commission of the Kosovo Assembly, which includes, among other things, consideration of all issues related to clarifying the fate of missing persons, researching facts and data related to missing persons and recommendations to the Assembly on the measures to be taken regarding the status and fate of the missing. The Committee is also responsible for liaising with international human rights organizations in order to exert pressure to clarify the facts regarding the fate of missing persons; contacting and informing the families of missing persons, considering and initiating legislation within its scope, but also considering petitions submitted to the Assembly.¹³

[The Kosovo Police](#) also has a role in the process of resolving the issue of missing persons. The War Crimes Investigation Unit, i.e., the Sector for Missing Persons, is part of the Serious Crime Directorate in the Kosovo Police Investigation Department and it is a specialized police unit authorized to investigate these crimes after the case is handed over by the EULEX mission. Upon the order of the SPRK, the police investigate the cases of missing persons, and during the excavation works they are responsible for securing the locations and other necessary security arrangements.

In addition, the issue of enforced disappearances in Kosovo will be addressed, among other things, by the Specialist Chambers and the Specialist Prosecutor's Office in The Hague.

[The Kosovo Specialist Chambers and the Specialist Prosecutor's Office](#) (Special Court) were established in accordance with an international agreement ratified by the Assembly of Kosovo, [the Amendment of the Constitution](#) and the [Law on Specialist Chambers and Specialist Prosecutor's Office](#) of Kosovo in 2015. These bodies have jurisdiction over crimes against humanity, war crimes and other crimes under Kosovo

¹² Strategija ratnih zločina, Tužilački savet Kosova, Državno tužilaštvo, Priština, februar 2019: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Dokumente%20Strategjike/STRATEGIJA%20RATNIH%20ZLOCINA.pdf>;

¹³ Poslovník Skupštine Kosova, Priština, april 2010, str. 51: https://www.assembly-kosova.org/Uploads/Data/Files/6/Rr_K_RK_29_04_2010_3_XRyC2ppcHm.pdf?cfchljschltk=ae9aab80117496651694f7d7302aaa22cf1e6a57-1614668585-0-AafMPF11dOpqahilEImn_4XtCfrwgm_uwVSeUJ3dnY9SmxeHXi45mv_JUEOI6QWlwQ2Je0NqJd2ulMQrUJHcDPLF1FZZW_TUhGbAEv97VdVLIXxv7T7w0dsTiBsHsmDoTh0SzPG5ht_WxqI9unIod35fOjt68PmFqcrmlBd35Oax3ggKIF2AwozYC2gH4ws1Cwe1Tatrp_FohEwBZtx37rTjpfWbLOaWb3svuQAReZiikok4mUXRLHALunMQC_gmDo9_NbmPURfd40R65PqpJUneSHDV6UmZwOCYC0VCiY5Z9UMvZ6AHhgGDGz5jVfaL68Cs03aKTCs5CAV3kpTxsVUMpzs50BaEZ-q9SMEXIXJ0PV9ALmWvDSDQvEafN-ng;

law, all in connection with the statements in the [Report of the Parliamentary Assembly of the Council of Europe of January 7, 2011](#). The headquarters of the KSC & SPO are in the Hague. The staff is international, as are the judges, the specialized prosecutor, and the secretary. They are of a temporary nature with a specific mandate and jurisdiction in proceedings related to crimes against humanity, war crimes and other crimes under Kosovo law, initiated or committed in Kosovo between 1 January 1998 and 31 December 2000 by citizens of Kosovo or the Federal Republic of Yugoslavia (FRY), or against them. Crimes against humanity where investigation and prosecution are within the mandate of this court include enforced disappearances of persons undertaken as part of a wider or systematic attack directed against the civilian population, with knowledge of the attack.¹⁴

The first two indictments for war crimes and crimes against humanity were filed and confirmed during 2020, and in one of them, the accused are charged with enforced disappearances, among other actions. Former President of Kosovo Hashim Taçi, former President of the Assembly of Kosovo Kadri Veseli, Rexhep Selimi and Jakup Krasniqi are accused that they “and other members of the joint criminal enterprise shared the common purpose to gain and exercise control over all of Kosovo by means including unlawfully intimidating, mistreating, committing violence against those deemed to be opponents” between March 1998 and September 1999 at the latest¹⁵. According to the indictment, “this common purpose encompassed the crimes of persecution, imprisonment, illegal or arbitrary arrest and detention, other inhumane acts, cruel treatment, torture, murder, and enforced disappearance of persons”.¹⁶

¹⁴ Zakon br. 05/L -053 o Specijalizovanim većima i Specijalizovanom tužilaštvu, član 13i: https://www.scp-ks.org/sites/default/files/public/05-l-053_s_0.pdf;

¹⁵ Optužnica protiv Tačija, Veseljija, Seljimija i Krasnićija, p. 4-5: <https://repository.scp-ks.org/LW/Published/Filing/0b1ec6e98037f0e4/PRILOG%203%20uz%20podnesak%20kojim%20se%20dostavljaju%20korigovane%20i%20javne%20redigovane%20verzije%20potvr%C4%91ene%20optu%C5%BEnice%20i%20prate%C4%87ih%20zahteva.pdf>;

¹⁶ Ibid. p. 10;

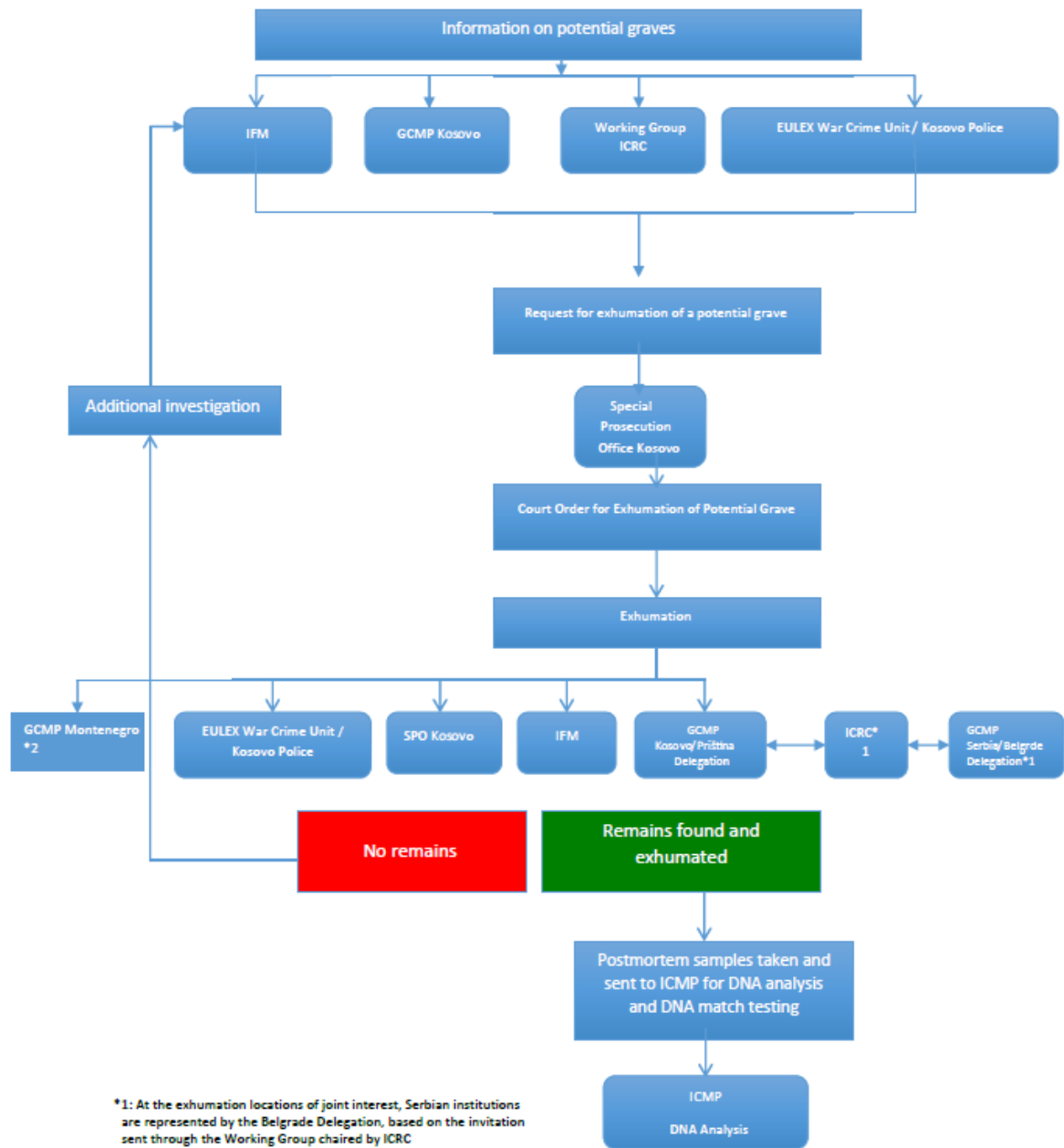


Chart 1. ICMP: Support in the process of finding and identifying missing persons – resolving deadlocks¹⁷

¹⁷ Vodič za porodice nestalih lica na Kosovu: Institucije, proces i prava porodica, Međunarodna komisija za nestala lica (ICMP), 2016, page 13: <https://www.icmp.int/wp-content/uploads/2016/12/Serbian-Guide-final-WEB.pdf>;

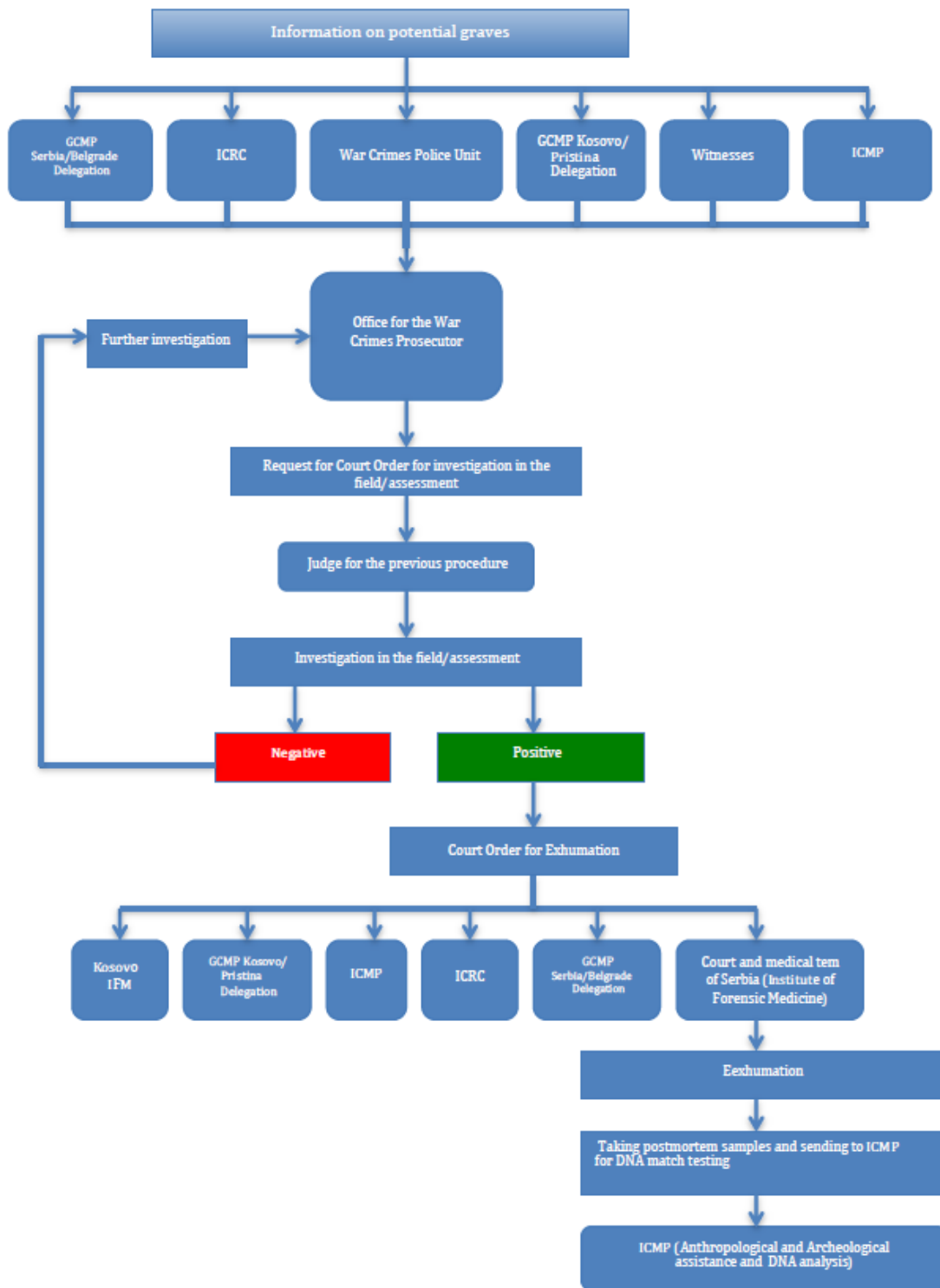


Chart 2. ICMP: Support in the process of finding and identifying missing persons – resolving deadlocks¹⁸

¹⁸ Vodič za porodice nestalih lica na Kosovu: Institucije, proces i prava porodica, Međunarodna komisija za nestala lica (ICMP), 2016, page 15: <https://www.icmp.int/wp-content/uploads/2016/12/Serbian-Guide-final-WEB.pdf>;

OBTAINING DATA ON THE MISSING - ARCHIVES

Serbia

After the war in Kosovo, 6,064 people were listed as missing. At the moment, another 1,642 people are searched for¹⁹, including persons of Albanian and Serbian nationality, but also national minorities living in Kosovo. In order to resolve the fate of persons still listed as missing, it is necessary to open and investigate local and international archives.

The opening of local archives primarily refers to the archives of the Ministry of Interior (MUP) of the Republic of Serbia and the Ministry of Defence (MoD) of the Republic of Serbia. The documents of the Ministry of Interior and the Ministry of Defence contain information on the operations carried out by the Yugoslav Army and the police during the war in Kosovo, but also on the clean-up of the terrain that occurred after the war. As noted in the Humanitarian Law Centre's (HLC) Policy Paper: [Accounting for Missing Persons from the Armed Conflicts of the 1990s in the Former Yugoslavia](#), MUP and MoD usually do not act upon requests for access to information of public importance, justifying that by the confidentiality of data or lack of possession.²⁰ Former Minister of Defence Bratislav Gašić, and today the director of the Security Information Agency (BIA), declared the archives of the 37th Motorized Brigade of the Yugoslav Army (Mtrbr. YA) a state secret in 2014.²¹ 37th Mtrbr. YA actively participated in crimes committed in the Drenica area where 180 KLA members and more than 1,400 civilians died in 1999. Bodies for the removal of which the Unit for Sanitation of Terrain of the 37th Mtrbr. YA was in charge were found in 2013 in a mass grave in Rudnica.²²

In addition to the archives of the Ministry of Interior and the Ministry of Defence, it is necessary to investigate the archives of public utility companies, cemeteries, health centres and public services that could participate in the transfer and burial of the remains.

At the online discussion [The Contribution of the Government of Serbia to Resolving the Issue of Missing Persons from the Armed Conflict in Kosovo 1998-2000](#), Veljko Odalović, President of the Commission for Missing Persons of the Government of the Republic of Serbia, pointed out that Serbia handed over 2,417 documents to ICRC and

¹⁹ Nacionalni konvent o EU, Snimak online diskusije Doprinos Vlade Srbije rešavanju pitanja nestalih iz oružanog sukoba na Kosovu 1998 – 2000, 19. januar 2021: [https://www.youtube.com/watch?v=3dsUiTTP7Xw](https://www.youtube.com/watch?v=3dsUiTTP7Xw;);

²⁰ Predlog praktične politike: Potraga za licima nestalim tokom oružanih sukoba na teritoriji bivše Jugoslavije tokom 1990-ih godina, Fond za humanitarno pravo, Beograd, jun 2018, str. 21: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_SRP_stampano_ff_13.07.2018.pdf;

²¹ FHP: Gašić arhivu 37. motorizovane brigade proglasio tajnom, Miloš Teodorović, Radio Slobodna Evropa, 12. jun 2015: <https://www.slobodnaevropa.org/a/fhp-gasic-arhivu-37-motorizovane-brigade-proglasio-tajnim/27068479.html>;

²² Dosije: Rudnica, Fond za humanitarno pravo, Beograd, januar 2015, str. 40: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_sr.pdf;

the delegation from Priština from various archives of the army, police and public utilities, that include drawings, maps, reports and statements. On that occasion, Odalović also mentioned the cooperation with the Kosovo Specialist Chamber (KSC) and SPO, which received the data on illegal camps for the needs of the indictment against Taçi and others.

According to Article 7 of the [Law on Organization and Competences of State Bodies in War Crimes Proceedings](#), state bodies and organizations are obliged, upon request of the War Crimes Prosecutor or the War Crimes Investigation Service, to submit evidence in their possession or otherwise communicate information that may assist in the identification of the perpetrators of war crimes.

In order to more efficiently search for missing persons, it is necessary to open the archives of international organizations and institutions that were present in Kosovo during, but also after the war. This applies primarily to the archives and documents of KFOR, UNMIK, EULEX, OSCE and ICTY. For example. As an example, Ivan Jovanović from UNDP states that, when killings and kidnappings by KLA took place after the withdrawal of the army and police from Kosovo, KFOR members often buried bodies and recorded events. Such documentation could be found in the archives of the country of a particular KFOR contingent. The Republic of Serbia seeks to obtain data from these archives, through ICRC, which could help identify sites where bodies are buried or identify remains, which is supported by UNDP, which has organized, among other things, a meeting of representatives of the Commission on Missing Persons of the Government of the Republic of Serbia and ambassadors of countries that may possess such documentation.

According to Jovanović, a meeting between the ambassadors and the president of the Commission for Missing Persons, Veljko Odalović, was held at the end of October last year. About 20 embassies were invited, and representatives of about 15 countries were present. The meeting was attended by EU countries (at that time including Great Britain), Canada, United States of America (USA) and international organizations - UNDP, EU, Council of Europe, OSCE, as well as ICRC, because requests and answers for searching archives go exclusively through them. According to Jovanovic, representatives of these countries and international organizations meet periodically within the informal group of representatives of embassies, most often ambassadors, which was first called *the Group of Friends of the Prosecutor of the Mechanism*, and later they used the name *Group of Friends of Transitional Justice*.

Finally, it is important to point out that the term “archives” does not necessarily refer to documents and data sorted in boxes and arranged in library-like rooms. The archives are also in the memories of people who witnessed or participated in the events.

Accordingly, “opening the archives” does not only mean opening the boxes in which the documents are stored, but also an invitation to those who have information to talk about them and share them with the relevant institutions.

Kosovo

As for the archives in Kosovo, it is important to note that the Serbian police was the only authority to which Kosovo Albanians could report enforced disappearances until 10 June 1999, when UNMIK took over responsibility for the administration of Kosovo. In the immediate aftermath of the war, UNMIK was unable to establish a rule of law across Kosovo, and until November 1999 had insufficient police officers to establish a law enforcement body to investigate reports of enforced disappearances and abductions of Serbs, Roma, and other minorities. In the absence of a police force, many family members reported these crimes to KFOR, who were also involved in the recovery and reburial of bodies.²³

According to a 2009 [Amnesty International](#) report, while the ICRC retained overall responsibility for documenting reports by families unable to trace their relatives, in the years immediately following the conflict there was massive confusion over the number and identity of missing persons. In addition to the ICRC, reports of missing persons were both received and actively solicited by the UNMIK Bureau for Detainees and Missing Persons, the Victim recovery and Identification Commission (VRIC) of the Organization for Security and Co-operation in Europe (OSCE), several international and local non-governmental organizations (NGOs), as well as associations of relatives of the disappeared and abducted.²⁴

Numerous agencies and ambiguities regarding where to report the disappearance of persons have led to a huge delay in determining the number and identity of the missing and, consequently, to a delay in opening criminal investigations. It is from the large number of different international organizations that have dealt with this issue that the importance of opening international archives in order to shed light on the fate of the missing in Kosovo arises.

In addition, finding and opening KLA archives is considered crucial for resolving this issue, which Belgrade insists on, and who have conditioned the opening of its archives

²³ *Amnesty International*: Sahrnjivanje prošlosti 10 godina nekažnjavanja za otmice i nestanke na Kosovu, jun 2009, str. 15: <https://www.amnesty.org/download/Documents/48000/eur700072009srp.pdf>;

There is no data about how much information received from family members or evidence obtained from the bodies found by KFOR was unofficially handed over to UNMIK. At the time of writing this document, KFOR archives relating to such reports have not been made available to researchers in Serbia or Kosovo.

²⁴ *Ibid.* p. 16;

with reciprocity. However, official Priština claims that the KLA was a guerrilla organization, and that military archives do not exist.²⁵

Nevertheless, in the [Draftlaw on Protection of the KLA War Values](#), which was repeatedly on the agenda of the Kosovo Assembly session without enough votes for its adoption, the KLA archives were recognized as a protected value.²⁶ Some authors, however, believe that it is unrealistic to expect that the KLA archives contain data on the graves of missing persons, and that, regardless of the fact that the archives are hidden, the public is aware of specific documentation.²⁷

It is pointed out that part of the documentation was used during the trial of Albanians before the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, and that this court contains numerous documents that were not used. In addition, selected documentation was used before courts in Kosovo that prosecuted former KLA members for war crimes. Many books published in Kosovo are written on the basis of the KLA archives and the authors refer to it, as well as the fact that certain KLA announcements are available to the public, in which this organization has taken responsibility for certain liquidations. Institutions of the Republic of Serbia, KFOR, UNMIK, EULEX, but also private individuals, also have various KLA documentation.²⁸

²⁵ Will Serbia and Kosovo Open Up Secret War Archives, Serbeze Haxhijaj and Milica Stojanović, BIRN, 11. avgust 2020: <https://balkaninsight.com/2020/08/11/will-serbia-and-kosovo-open-up-secret-war-archives/>;

²⁶ Kosovska skupština opet bez kvoruma: Nacrt zakona o vrednostima rata OVK nije izglasan, KosSev, 16. oktobar 2020: <https://kossev.info/kosovska-skupstina-opet-bez-kvoruma-nacrt-zakona-o-vrednostima-rata-ovk-nije-izglasan/>;

²⁷ Bojan Đokić, Arhiva OVK, Danas, 15. septembar 2020: <https://www.danas.rs/drustvo/suocavanje/arhiva-ovk/>;

²⁸ Ibid;

WAR CRIMES TRIALS AND THE SEARCH FOR THE MISSING

Serbia

“Disappearance of people during armed conflicts is largely a consequence of violations of international humanitarian law”²⁹, and resolving the issue of missing persons is, in essence, a humanitarian issue that must not be conditioned. Resolving the fate of missing persons, however, can also provide information on those responsible for committing crimes, thus contributing to the process of transitional justice and war crimes trials.

In the period we are analysing, in 2016, the [National Strategy for War Crimes Prosecution](#) was adopted, which was valid until 2020. The Strategy states that it is necessary that “war crimes proceedings [are] lawfully conducted, within a reasonable time, with full respect for the rights of all subjects of the proceedings. This would allow those responsible for war crimes to be adequately punished, victims to receive justice, and bodies of the missing to be found.”³⁰ The stated goals that would contribute to the progress in the field of war crimes trials and resolving the issue of missing persons are the improvement of the normative framework, institutional and administrative capacities of state authorities, but also the improvement of regional and international cooperation.³¹ Reducing the number of missing persons would be one of the indicators of the successful implementation of the National Strategy.³²

Two years later (2018), the [Prosecutor’s Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia](#) was adopted, with a validity period until 2023. The Prosecutor’s Strategy is harmonized with the National Strategy, it recognizes the need for timely implementation of war crimes proceedings, but also intensification of investigations of sites³³ and improvement of cooperation between the War Crimes Prosecutor’s Office and the Commission for Missing Persons of the Government of the Republic of Serbia.³⁴

The Prosecutor’s Strategy also states that “at the request of the Prosecutor’s Office, and for the purpose of conducting specific criminal proceedings, the Commission for Missing Persons of the Government of the Republic of Serbia submits documentation

²⁹ Predlog praktične politike: Potraga za licima nestalim tokom oružanih sukoba na teritoriji bivše Jugoslavije tokom 1990-ih godina, Fond za humanitarno pravo, Beograd, 2018, str. 22: http://www.hlc-rdc.org/wpcontent/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_SRP_stampano_ff_13.07.2018.pdf;

³⁰ Nacionalna strategija za procesuiranje ratnih zločina, Službeni glasnik Republike Srbije, br. 19/2016, str. 4: <https://www.mpravde.gov.rs/vest/12116/-nacionalna-strategija-za-procesuiranje-ratnih-zlocina-.php>;

³¹ Ibid. p. 30-31;

³² Ibid. p. 7;

³³ Tužilačka strategija za istragu i gonjenje ratnih zločina u Republici Srbiji (2018-2023), str. 8:

http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2018-05/strategija_trz_srb.pdf;

³⁴ Ibid. p. 32;

and data from its records to the Prosecutor's Office",³⁵ as well as "information regarding the circumstances of disappearances and possible sites where the bodies of those killed were buried"³⁶.

It is important to remember that in 2015, after the publication of the file [Rudnica](#) of the Humanitarian Law Centre, the then prosecutor for war crimes, Vladimir Vukčević, announced an investigation against the Chief of General Staff Ljubiša Diković.³⁷ Tomislav Nikolic, then the President of the Republic of Serbia, publicly supported the general, and told Vukčević to "think a little about what he is digging in Serbia."³⁸ The investigation against Ljubiša Diković was not initiated, and Vukčević's mandate expired at the end of that year.

In the period from 1 January 2016 to 31 May 2017, there was no authorized war crimes prosecutor, which led to a delay in the proceedings because only an authorized prosecutor can represent existing indictments and file new ones.³⁹

In its Reports on War Crimes Trials in Serbia, the Humanitarian Law Centre states that the number of missing persons is not decreasing at an appropriate rate⁴⁰, underlines the problem of the lack of indictments for crimes in Kosovo⁴¹ and points out problems in the indictment for crimes in the village of Trnje – lack of records on exhumation and autopsy, i.e., non-registration of missing persons by the competent authorities.⁴²

In addition to the existing legal framework and strategies, the Report of the Commission for Missing Persons for 2019 emphasizes the need to draft a Law on Missing Persons which would regulate the rights of family members of missing persons, emphasized by representatives of the Coordination of Serbian Associations of Families of Missing Persons, supported by president of the Republic of Serbia, Aleksandar Vučić.⁴³ The Working Group for drafting the Law on Missing Persons includes representatives of the Commission on Missing Persons, the Ministry of Justice, the Ministry of Interior, the

³⁵ Ibid. p. 31;

³⁶ Ibid. p. 32;

³⁷ During the war in Kosovo, Ljubiša Diković commanded the 37th Motorized Brigade, responsible for killing a large number of civilians in the Drenica area. The Unit for Sanitation of the Terrain of the 37th Mtrb. was in charge of removing the bodies, many of which were found in 2013 in the Rudnica mass grave.

Dosije Rudnica, Fond za humanitarno pravo, Beograd, januar 2015, p. 27 i 39:

http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_sr.pdf;

³⁸ Nikolić: Tužilac Vukčević da razmisli šta kopa po Srbiji, Ognjen Zorić, Radio Slobodna Evropa, 14. februar 2015:

<https://www.slobodnaevropa.org/a/nikolic-tuzilac-vukcevic-da-razmisli-sta-kopa-po-srbiji/26849571.html>;

³⁹ Izveštaj o suđenjima za ratne zločine u Srbiji tokom 2017. i 2018. godine, Fond za humanitarno pravo, Beograd, maj 2019, str. 28-29; <http://www.hlc-rdc.org/wp-content/uploads/2019/05/Izvestaj-o-sudjenjima-za-ratne-zlocine-u-Srbiji.pdf>;

⁴⁰ Ibid. p. 23;

⁴¹ Izveštaj o suđenjima za ratne zločine u Srbiji tokom 2016. godine, Fond za humanitarno pravo, Beograd, maj 2017, str. 20:

http://www.hlrcdc.org/wpcontent/uploads/2017/05/Izvestaj_o_sudjenjima_za_2016.pdf;

⁴² Izveštaj o suđenjima za ratne zločine u Srbiji tokom 2017. i 2018. godine, Fond za humanitarno pravo, Beograd, maj 2019, str. 86:

<http://www.hlc-rdc.org/wp-content/uploads/2019/05/Izvestaj-o-sudjenjima-za-ratne-zlocine-u-Srbiji.pdf>;

⁴³ Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2019. godine, Vlada Republike Srbije, Komisija za nestala lica, Beograd, februar 2020, str. 10-11: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

Ministry of Labour, Employment, Veterans and Social Affairs, the Ministry of European Integration, and the UNDP representative Ivan Jovanović. In addition to the need to pass a law on missing persons, Jovanović emphasizes the need to amend the Criminal Code to define enforced disappearance, an act that is currently only a crime against humanity, as a special crime without the possibility of statute of limitations.

Kosovo

The investigation and prosecution of enforced disappearances in Kosovo, from July 1999 to November 2008, was the responsibility of UNMIK, which was responsible for serious crimes, including war crimes.

The *Amnesty International* report from 2013 stated that the UNMIK mission had failed to initiate timely and thorough investigations when people reported the disappearance of their family members immediately after the end of the armed conflict in Kosovo. It is added that based on the evidence gathered by the UNMIK Human Rights Advisory Panel (HRAP), there is a shocking disregard for the rights of missing persons and members of their families.⁴⁴

The report states that reports of missing persons were not promptly, impartially, and thoroughly investigated by UNMIK police, and that relatives were rarely informed of any progress in those investigations. In some of the complaints considered prior to the publication of this report, the HRAP has found that no investigation has ever taken place, or that the investigation was abandoned after the remains of the missing persons were returned to their families.⁴⁵

Although the report focuses on the abduction of Kosovo Serbs by KLA members, Amnesty International found similar failures by UNMIK to conduct a timely, impartial, and effective investigation of enforced disappearances of Kosovo Albanians by Serb police, the army, and paramilitary units.

UNMIK's responsibilities for the rule of law in Kosovo ended in December 2008, when the EULEX mission took over UNMIK police, prosecution, and judicial functions, as well as the authority to investigate and prosecute serious crimes, including crimes under the international law.

⁴⁴ Kosovo: UNMIK's legacy: The failure to deliver justice and reparation to the relatives of the abducted, Amnesty International, 2013, str. 5: <https://www.amnesty.org/download/Documents/16000/eur700092013en.pdf>;

⁴⁵ Kosovo: UNMIK's legacy: The failure to deliver justice and reparation to the relatives of the abducted, Amnesty International, 2013, str. 5: <https://www.amnesty.org/download/Documents/16000/eur700092013en.pdf>;

Amnesty International states that EULEX's work in the investigation of enforced disappearances so far has shown that "some progress has been made" in the disappearance of Kosovo Albanians by Serb forces. On the other hand, "minor progress" has been made in investigations and prosecutions related to the abductions of Serbs and other minorities.⁴⁶

In 2014, the transfer of EULEX powers to local, Kosovo authorities began. As of June 2018, the SPO has exclusive jurisdiction to investigate and prosecute war crimes and other violations of international humanitarian law.

EULEX handed over about 900 war crimes cases to the SPRK, while about 2,000 cases related to missing persons were transferred from the EULEX War Crimes Sector to the War Crimes Investigation Unit, i.e., the Missing Persons Unit in the Kosovo Police.⁴⁷

The Prosecutorial Council of Kosovo adopted the [Strategy of War Crimes](#) in February 2019. One of the goals of this strategy is to ensure the investigation and prosecution of war and other crimes under international law, including enforced disappearances and killings of missing persons, during and after armed conflict. The Strategy states that "cases of forced missing and abductions committed in the context of the conflict in Kosovo should be thoroughly investigated to ensure that those responsible, including civilian commanders and civil servants will be punished in accordance with the weight of their actions."⁴⁸

In order to achieve this, it is primarily necessary to assess the cases submitted by EULEX. It is pointed out that this should have been done by EULEX "instead of being set aside and handed over to the SPRK and the Kosovo Police". It is added that the prosecution and the police will activate these cases "as soon as possible". It also states that "from the EULEX handover, it is clear that the cases for missing persons were not processed and were not prioritized by EULEX throughout its mandate", as well as that they have not provided any explanation for this.⁴⁹

Given the volume of cases handed over to the prosecution and police by EULEX (900 war crimes cases and 2,000 missing persons cases), the strategy states that it is "unrealistic to expect all the alleged violations of international humanitarian law that have been committed during or after the conflict, to be investigated or prosecuted in the

⁴⁶ Ibid. p. 7;

⁴⁷ Strategija ratnih zločina, Tužilački savet Kosova, Državno tužilaštvo, Priština, februar 2019, p. 5: <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Dokumente%20Strategjike/STRATEGIJA%20RATNIH%20ZLOCINA.pdf>;

⁴⁸ Ibid. p. 24;

⁴⁹ Ibid. p. 10;

same manner and with the same commitment, in particular, having in mind the limited resources allocated to SPRK and the WCIU of Kosovo Police”.⁵⁰

It also points out that the cooperation between the State Prosecutor and the Institute of Forensic Medicine and regional cooperation in this field and with relevant local and international institutions is essential to a successful investigation of the abduction and disappearance of people that occurred during and after the war.⁵¹ However, the “insufficient or lack of implementation of protocols for co-operation between prosecutions in charge of investigating and prosecuting war crimes and other violations of international humanitarian law, including the fate of missing persons, has resulted in a degree of unsatisfactory cooperation on information exchange at the regional level”.⁵²

One of the main problems emphasized, when it comes to the investigation and prosecution of war crimes, including the fate of the missing, is the lack of a strategic plan or agreement between Kosovo and Serbia. The Strategy states that cooperation and exchange of information between Kosovo and Serbian prosecution bodies “almost does not exist”, and that “the only existing protocol of cooperation is the one between the EULEX Police and the Serbian MUP”.⁵³ A special problem, as pointed out, is the immunity of suspects who are in Serbia or other states in the territory of the former Yugoslavia, and of the evidence material that is “often located in the ICTY and other international organizations.”⁵⁴

Special Prosecutor Drita Hajdari, after the adoption of this strategy, expressed concern that the Strategy could not succeed without the support of high political officials, both in Kosovo and in Serbia.⁵⁵

According to the HLC Kosovo, from 1999 to the end of 2020, 41 people were convicted of war crimes in Kosovo (34 Albanians, 6 Serbs and 1 Roma). In more than 90% of these cases, convictions were handed down for crimes committed against the Albanian civilians. Although the Strategy was adopted in 2019, reports on progress in its implementation are not available to the public.

⁵⁰ Ibid. p. 10;

⁵¹ Ibid. p. 24;

⁵² Ibid. p. 18;

⁵³ Ibid. p. 18-19;

⁵⁴ Ibid. p. 6;

⁵⁵ Kosovo: Nova Strategija za ratne zločine se suočava sa političkim preprekama, Serbeze Hadžijaj, BIRN, 13. mart 2019: <https://balkaninsight.com/2019/03/13/kosovo-nova-strategija-za-ratne-zlocine-se-suocava-sa-politickim-preprekama/?lang=sr>;

ACTIVITIES OF STATE AUTHORITIES ON REDUCING THE NUMBER OF MISSING PERSONS AND DISCOVERING MASS GRAVES IN SERBIA AND KOSOVO

Serbia

According to the Work Report of the Commission for Missing Persons of the Government of the Republic of Serbia, by the end of 2016, 1,660 persons were listed as missing.⁵⁶ That year, three sessions of the Working Group for Missing Persons within the Belgrade - Priština Dialogue and three sessions of the Working Subgroup for Forensic Issues were held. Two sessions of the Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija of the Committee for Kosovo and Metohija of the National Assembly were also held.⁵⁷ During the year, the Commission participated in exhumations, re-associations, identifications, and handovers of 12 persons in connection with the conflict in Kosovo and Metohija.⁵⁸

The Commission for Missing Persons states that by the end of 2017, 1,654 persons were listed as missing.⁵⁹ During the year, two sessions of the Commission for Missing Persons, Seventh and Eighth, two sessions of the Working Group, one session of the Working Subgroup for Forensic Issues, five meetings of the Analysis Team and several sessions of the Assembly Working Group were held.⁶⁰ In 2017, the Commission participated in exhumations, re-associations, identifications and handovers of four persons in connection with the conflict in Kosovo and Metohija.⁶¹

By the end of December 2018, 1,653 persons were still listed as missing, according to the report of the Commission for Missing Persons.⁶² Three sessions of the Working Group, three sessions of the Working Subgroup for Forensic Issues, a meeting of the Analysis Team and three sessions of the Working Group of the Assembly Committee for Kosovo and Metohija were also held. The head of the Assembly Working Group, Milovan Drecun, pointed out the processing of 1630 events and 3573 documents processed in connection with the areas of Drenica and Dukagjin.

⁵⁶ Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2016. godine, Beograd, februar 2017, p.4: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

⁵⁷ Ibid. p. 9-12;

⁵⁸ Ibid. p. 4;

⁵⁹ Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2017. godine, Beograd, mart 2018, p 6: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

⁶⁰ Ibid. p. 9-14;

⁶¹ Izveštaj o radu Komesarijata za izbeglice i migracije za 2017. godinu, Beograd, mart 2018. godine, p. 71: <https://kirs.gov.rs/media/uploads/2017.pdf>;

⁶² Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2018. godine, Beograd, januar 2019, p. 5: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

In July 2018, at the summit of the Western Balkan countries in London, the Joint Declaration on Missing Persons was signed, and in November, the Framework Plan was signed in The Hague.⁶³ In order to implement the Framework Plan, the Missing Persons Group (MPG) was established, consisting of two operational groups - the Operational Group for the Database of Active Cases of Missing Persons in the Former Yugoslavia and the Group for Resolving Unidentified Remains in Mortuaries in the Region.⁶⁴

In 2018, four locations that were assumed to be the graves of Kosovo Albanians were checked - Kiževak, Jalovište, Medevce and Karadak. Kiževak and Jalovište were nominated for the search by the Belgrade delegation of the Working Group for Missing Persons, Medevce by RECOM, and Karadak by the War Crimes Prosecutor's Office. No remains were found at any of the sites.⁶⁵

In 2018, the Commission participated in exhumations, re-associations, identifications, and handovers of eight persons in connection with the conflict in Kosovo and Metohija.⁶⁶

In the Report of the Commission for Missing Persons, as of December 2019, 1,646 persons were listed as missing.⁶⁷ During the year, the ninth session of the Commission for Missing Persons was held⁶⁸, as well as one session of the Working Group, one meeting of the Analysis Team and three sessions of the Assembly Working Group. No session of the Working Subgroup on Forensic Issues was held.⁶⁹

On the sidelines of the summit of the Western Balkan countries in Poznan, a meeting of the Missing Persons Group was held, where the first report of the Group was presented. After that, two more meetings of the Missing Persons Group were held - in Zagreb and in Podgorica.⁷⁰ In 2019, the Commission participated in exhumations, re-associations, identifications, and handovers of eight persons in connection with the conflict in Kosovo and Metohija.⁷¹ The terrain at the location Jalovište near Raška was also checked, but no remains were found.⁷²

⁶³ Izveštaj o radu Komesarijata za izbeglice i migracije za 2018. godinu, Beograd, april 2019, p. 26-28: <https://kirs.gov.rs/media/uploads/2018.pdf>;

⁶⁴ Ibid. p. 89-90;

⁶⁵ The response of the Commissariat for Refugees and Migration of the Republic of Serbia to the request for access to information of public importance submitted by the Youth Initiative for Human Rights on 22 January 2021.

⁶⁶ Ibid;

⁶⁷ Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2019. godine, Beograd, februar 2020, p. 7: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

⁶⁸ Ibid. p. 10;

⁶⁹ Ibid. p. 14-16;

⁷⁰ Izveštaj o radu Komesarijata za izbeglice i migracije za 2019. godinu, Beograd, april 2020, p. 67-69: <https://kirs.gov.rs/media/uploads/2019.pdf>;

⁷¹ Ibid. p. 67;

⁷² Izveštaj o radu Komisije za nestala lica u periodu od 1. januara do 31. decembra 2019. godine, Beograd, februar 2020, p. 17: <http://www.kznl.gov.rs/latinica/dokumenta.php>;

Two meetings of the Missing Persons Group were held in 2020. At the second meeting, held in October in Belgrade, the Work Report of the Missing Persons Group for the period from July 2019 to November 2020 was discussed. The report was presented at the Western Balkans Summit in Sofia.⁷³ In December 2020, the first exhumations took place at the Kiževak location near Raška.⁷⁴ Excavations at the Kiževak mine began in November 2015 but were often suspended due to technical reasons and weather conditions. Since Kiževak was an active mine, the appearance of the terrain changed, which made it difficult to find the exact location where the bodies were buried in 1999. The search was aided by a satellite image from the US Department of Defence, which successfully reconstructed the appearance of the location in 1999. Odalović states that five bodies exhumed at the Kiževak location are in the identification phase, and that at least 10 more bodies are expected to be found. Kiževak is currently preserved due to unfavourable weather conditions, and the works will continue in the spring of 2021, as soon as the weather conditions allow.⁷⁵

In 2020, on the order of the War Crimes Prosecutor's Office, a trial excavation was carried out in Kozarevo, in the municipality of Novi Pazar. During the year, the Commission participated in exhumations, re-associations, identifications, and handovers of 11 persons related in connection with the conflict in Kosovo and Metohija.⁷⁶

In an online discussion held in January 2021, the president of the Commission for Missing Persons stated that another 1,642 people are listed as missing. On that occasion, Odalović also pointed out that the last inspected location was located near the Štavalj coal mine. The Priština delegation pointed out the location, and inspection of the location could start in the spring of 2021.

In February 2021, the remains of a soldier who died in Košare during the 1999 war were taken over and identified.⁷⁷

As visible from the report of the Commission for Missing Persons and the words of its representatives, in the period from 2016 to 2020, the fate of 18 persons who were listed as missing in connection with the war in Kosovo was resolved. Through requests for information of public importance, the Youth Initiative for Human Rights requested

⁷³ Predstavljen drugi izveštaj Grupe za nestala lica, Komisija za nestala lica, 18. decembar 2020:

<http://www.kznl.gov.rs/latinica/aktuelno.php>;

⁷⁴ Ekshumacija posmrtnih ostataka u rudniku Kiževak kod Raške, Komisija za nestala lica, 4. decembar 2020:

<http://www.kznl.gov.rs/latinica/aktuelno.php>;

⁷⁵ Online diskusija Doprinos Vlade Srbije rešavanju pitanja nestalih iz oružanog sukoba na Kosovu 1998 – 2000, 19. januar 2021:

[https://www.youtube.com/watch?v=3dsUiTtp7Xw](https://www.youtube.com/watch?v=3dsUiTtp7Xw;);

⁷⁶ Odgovor Komesarijata za izbeglice i migracije Republike Srbije na zahtev za pristup informacijama od javnog značaja koji je Inicijativa mladih za ljudska prava uputila 22. januara 2021. godine.

⁷⁷ Preuzeti posmrtni ostaci vojnika stradalog u konfliktu na AP KiM 1999. godine, Komisija za nestala lica, 03. februar 2021:

<http://www.kznl.gov.rs/latinica/aktuelno.php>;

aggregate data from the Commission for Missing Persons on the exact number of discovered, exhumed, and handed over remains in this period, but we did not receive aggregate data until the analysis was finalized.

Comparing the ICRC data, the HLC notes that the National Strategy for War Crimes Prosecution does not lead to an efficient and significant reduction in the number of missing persons. In November 2018, 10,261 people from the wars in Croatia, Bosnia and Herzegovina and Kosovo were listed as missing, while in November 2019, that number was reduced to 10,090.⁷⁸

Between 2016 and 2020, but even before that, no indictment was filed as a result of finding mass graves with the bodies of Kosovo Albanians, nor did any criminal proceedings for crimes committed in Kosovo result in the discovery of mass graves and missing persons in Serbia. It should be mentioned, however, that the criminal proceedings in the *Drenica Group* case, conducted in Kosovska Mitrovica, led to the discovery of the Rudnica mass grave in Serbia, where the first remains were exhumed in 2014.⁷⁹

The Commission for Missing Persons meets with international organizations, associations of families of the missing and Priština representatives. The Belgrade and Priština delegations of the Working Group for Missing Persons regularly exchange information and together go to the field and identify the found remains. The Commission points out that every location referred to by Priština, organizations such as the RECOM Reconciliation Network or individuals, were searched. However, a passive approach to the problem of missing persons is noticeable. Consequently, a more proactive approach to this issue is needed, both by the Commission for Missing Persons and by other relevant authorities.

Kosovo

According to the EULEX mission, in the period from 2016 to 2020, 59 terrain assessments, 41 exhumations were conducted in Kosovo, the remains of 66 individuals were found, while 32 missing persons were identified.⁸⁰

⁷⁸ Peti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina, Fond za humanitarno pravo, Beograd, decembar 2019, p. 16: http://hlc-rdc.org/wp-content/uploads/2019/12/Peti_izvestaj_o_sprovođenju_Nacionalne_strategije_za_procesuiranje_ratnih_zlocina.pdf;

⁷⁹ Dosije Rudnica, Fond za humanitarno pravo, Beograd, januar 2015, str. 9 http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_sr.pdf;

⁸⁰ The information was obtained by the EULEX mission, on 3 February 2021 upon the request for information of public importance by the New Social Initiative (NSI). On the other hand, the ICMP report from 2017 states, based on data provided to them by EULEX, that 20 field operations (exhumation and field assessment) were carried out in 2016, with 16 incomplete sets of mortal remains and 1 complete; Lica nestala usled sukoba na Kosovu i njegovih posljedica – Pregled stanja, Međunarodna komisija za nestala lica, Priština, 2017, p. 21: <https://www.icmp.int/wp-content/uploads/2017/05/kosovo-stocktaking-report-2017-bcs-2.pdf>;

In 2016, 24 terrain assessments and 9 exhumations were performed, the remains of 16 persons were found, while 9 missing persons were identified. In the following year, 2017, 8 terrain assessments and 12 exhumations were performed, the remains of 19 individuals were found, while 7 missing persons were identified.⁸¹ In 2018, 6 assessments of the terrain and 1 exhumation were performed, the remains of 7 individuals were found, while 5 missing persons were identified. In 2019, 18 terrain assessments and 10 exhumations were performed, the remains of 11 individuals were found, while 9 missing persons were identified. Last year, 2020, 3 terrain assessments and 9 exhumations were performed, the remains of 13 individuals were found, and 2 missing persons were identified.⁸²

Information on the excavation sites, ethnicity and gender of the identified individuals was not provided to the authors by EULEX. More specific information on the activities undertaken by the Commission for Missing Persons of the Government of Kosovo in the period from 2016 to 2020 is not available.⁸³

The report of the Missing Persons Group in the period from July 2019 to the end of October 2020 states that the Kosovo Commission for Missing Persons participated in 12 field surveys, 18 exhumations in Kosovo and two exhumations in Serbia. During the exhumations on the territory of Kosovo, the remains of 13 people were found. In this period, the Commission identified 14 persons and handed over their remains to their families. The remains of five people were handed over to Montenegro, two to Serbia, and the remains of one person were handed over to Kosovo by Bosnia and Herzegovina.⁸⁴

According to the data of the Commissariat for Refugees and Migration of the Republic of Serbia, the Belgrade delegation of the Working Group for Missing Persons attended several trial excavations on the territory of Kosovo and Metohija in the period from 2016 to 2020. In 2016, the delegation attended excavations near the Church of Christ the Savior in Priština and at the location in Leposavić. No remains were found at any of the sites. The following year (2017), excavations were carried out near the mosque in Kosovska Mitrovica, the Orthodox cemetery in Prizren and the village of Kovače in the municipality of Zubin Potok. Two persons of Serbian nationality were found in Prizren. In 2018, excavations were carried out at the location in Đakovica/Gjakova, and on that occasion, the remains of eight persons of Serbian and non-Albanian nationality were found. In 2019, excavations were carried out without success at the locations of Kišnica

⁸¹ Isto;

⁸² Ibid;

⁸³ The Commission for Missing Persons of the Government of Kosovo still does not have a functioning official website. It is not possible to find the reports of this commission for the period 2016-2020 on the website of the Government of Kosovo. Upon request for submission of reports from the Commission, we were told that the summary reports of the Commission are submitted to the Government of Kosovo and that they are publicly available.

⁸⁴ Godišnji izveštaj Grupe za nestala lica, novembar 2020, p. 6-7

and Ugljara, but the remains of two people - one of Serbian and the other Albanian nationality - were found at the Tusus location in the Prizren municipality and at the Muslim cemetery in Kosovska Mitrovica. In Budisavce, Klina municipality, a potential grave with two persons of Serbian nationality was marked. In 2020, excavations were carried out on several occasions at the Muslim cemetery in Kosovska Mitrovica, when the remains of six persons of Albanian nationality were found. Surveying of a location in Košare was also carried out, where, as it is presumed, the remains of three former soldiers of Serbian nationality are located.⁸⁵

These data are also stated in two EULEX mission reports for 2017 and 2018. However, the reports cover the period of the second half of the previous and the first half of the year of the report, without indicating the date when the excavation was carried out at a specific location.⁸⁶

The issue of missing persons in Kosovo is also addressed in the reports of the European Commission (EC), however, the data contained in them for 2018 and 2019 do not match the data of EULEX. Thus, the reports state that in 2018, the Commission for Missing Persons of the Government of Kosovo conducted field assessments and exhumations at 20 locations and that 7 cases of missing persons were resolved, while in 2019 it is stated that 8 cases were resolved, and field assessments and exhumations were conducted at 29 locations.⁸⁷ We also requested information from the ICRC on the locations where the excavations were carried out, the number of found remains, identified persons, their ethnicity and gender for the period from 2016 to 2020, but they were not submitted to us until the publication of this report.

⁸⁵ Response of the Commissariat for Refugees and Migration of the Republic of Serbia to the request for access to information of public importance sent by the Youth Initiative for Human Rights on 22 January 22 2021

⁸⁶ Compact progress report – Assessing progress between July 2016 and June 2017, EULEX: <https://www.eulex-kosovo.eu/eul/repository/docs/CPR-2017.pdf> and Compact progress report – Assessing progress between July 2017 and June 2018, EULEX: <https://www.eulex-kosovo.eu/eul/repository/docs/106075-CPR-2018-En.PDF>;

⁸⁷ Kosovo report 2019, European Commission: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>;

and Kosovo report 2020, European Commission: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf;

FINDINGS OF INTERNATIONAL INSTITUTIONS ON SOLVING THE ISSUES OF THE MISSING PERSONS (2016-2020)

Serbia

UN Committee on Enforced Disappearances

[International Convention for the Protection of All Persons from Enforced Disappearance](#) is an international instrument on human rights of a legislative nature. The provisions of the Convention set out individual and collective rights, certain measures to monitor compliance, and established the UN Committee on Enforced Disappearances, which seeks to ensure that the parties abide by their commitments. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted and opened for signature, ratification, and accession by UN General Assembly Resolution no. 61/177 of 6 February 2007.⁸⁸

The Republic of Serbia ratified the Convention in May 2011 (“RS Official Gazette - International Agreements”, No. 1/2011), which, inter alia, accepted the obligation to report to the Committee on Enforced Disappearances on the measures taken and the progress made in ensuring respect for rights recognized in the Convention.⁸⁹

Pursuant to Article 19 of the Convention, States Parties shall submit to the Committee on Enforced Disappearances a report on the measures taken to give effect to its obligations under the Convention and on the progress made in the enjoyment of those rights within two years after the entry into force of the Convention for the State Party concerned, and thereafter whenever the Committee requests so.

Pursuant to Article 30 of the Convention, a request that a disappeared person should be sought and found has been established, which may be submitted to the Committee as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest, on the basis of which the Committee may request the States Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

On 27 April 2016, pursuant to paragraph 36 of the Concluding Observations of the Committee on Enforced Disappearances (CED / C / SRB / CO / 1), the Government of

⁸⁸ Konvencija o zaštiti svih lica od prisilnih nestanaka: <https://ljudskaprava.gov.rs/sh/node/19859>;

⁸⁹ Inicijalni izveštaj Srbije o primeni Međunarodne konvencije o zaštiti svih lica od prisilnih nestanaka: <https://ljudskaprava.gov.rs/sr/node/162>;

the Republic of Serbia adopted the Responses on the Implementation of Recommendations from the Concluding Observations of the Committee on Enforced Disappearances on the Initial Report on the Application of the International Convention for the Protection of All Persons from Enforced Disappearance contained in paragraphs 11, 14 and 28.⁹⁰

In the period after the UN Committee on Enforced Disappearances issued concluding remarks on the Initial Report submitted by Serbia, the capacity of the War Crimes Prosecutor's Office was not upgraded, and information on the suspension of individuals in civilian and military services suspected of participating in the execution of the enforced disappearance did not reach the public. The European Commission's Progress Report on Serbia for 2018 estimates that the protection of witnesses in war crimes cases has been improved, but that the working conditions and capacities of the Protection Unit have not been improved, and that the appropriate legislative changes needed for a proactive witness identity change have not been implemented.⁹¹

Council of Europe Commissioner for Human Rights

As stated in the HLC's Policy Paper "Accounting for Missing Persons from the Armed Conflict in the former Yugoslavia"⁹², the Council of Europe Commissioner for Human Rights, in the report "Missing Persons and Victims of Enforced Disappearance in Europe", addressed the issue of searching for missing persons in the wars in the former SFRY.⁹³ In the mentioned report published in 2017, the Commissioner emphasizes that in order to achieve long-term peace and reconciliation, it is crucial to determine the truth about serious human rights violations and enforced disappearances, as well as to respect and remember the victims of these crimes. According to the HLC's Policy Paper, this report also includes recommendations concerning the process of clarifying the fate of missing persons, ranging from treating accounting for missing persons as a priority issue by the governments in the region, encouraging intergovernmental cooperation in that regard, making the information held in official archives and security and intelligence agencies' archives publicly available, and considering applying the principle of universal jurisdiction to cases of enforced disappearances, as it could contribute to the identification and punishment of perpetrators.⁹⁴ The report also

⁹⁰ Konvencija o zaštiti svih lica od prisilnih nestanaka: <https://ljudskaprava.gov.rs/sh/node/19859>;

⁹¹ Izveštaj o napretku Republike Srbije za 2018. godinu, Evropska komisija, p. 21:

[https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_srbiji\(1\).pdf](https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/izvestaj_ek_o_srbiji(1).pdf);

⁹² Predlog praktične politike: Potraga za licima nestalim tokom oružanih sukoba na teritoriji bivše Jugoslavije tokom 1990-ih godina, Fond za humanitarno pravo, Beograd, jun 2018, str. 17: http://www.hlc-rdc.org/wpcontent/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_SRP_stampano_ff_13.07.2018.pdf;

⁹³ Izveštaj Nestale osobe i žrtve prisilnih nestanaka u Evropi iz 2017. godine je dostupan na: <https://bit.ly/3nOwkWt>;

⁹⁴ Predlog praktične politike: Potraga za licima nestalim tokom oružanih sukoba na teritoriji bivše Jugoslavije tokom 1990-ih godina, Fond za humanitarno pravo, Beograd, jun 2018, p. 17: http://www.hlc-rdc.org/wpcontent/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_SRP_stampano_ff_13.07.2018.pdf;

contains recommendations aimed at recognizing the specific situation of the families of missing persons.⁹⁵

European Commission

According to the HLC's Policy Paper⁹⁶, the European Commission, in its reports on Serbia, which show progress in meeting political, economic, and administrative criteria for EU accession, has for years focused on the problems of establishing criminal justice for war crimes committed during armed conflicts in the former Yugoslavia, but also the issue of determining the fate of missing persons. Reports from 2016 to 2020 emphasize that the unresolved fate of persons who went missing in the context of the armed conflicts of the 1990s continues to be a humanitarian problem. As a key obstacle in resolving the remaining cases of missing persons, in the last four annual reports, European Commission has cited a lack of information on grave locations and difficulties in identifying already exhumed remains.⁹⁷

The latest report for 2020 states that the political stalemate between Belgrade and Priština continued to affect the progress on the resolution of missing cases related to the Kosovo conflict.⁹⁸ In its 2020 report, the EC pointed out that the families of missing persons need more comprehensive support than currently available and the capacity of the state mechanism for searching missing persons should be further strengthened. The report especially emphasizes the need to draft a law on missing persons, which has been initiated in 2019, in order to strengthen support to the families of missing persons, and to reinforce the capacity of the state mechanisms for the search of missing persons.⁹⁹

Kosovo

International Commission on Missing Persons

ICMP's Stocktaking Report from 2017¹⁰⁰ states that progress in terms of recovery and identification of missing persons from the Kosovo conflict has slowed dramatically in the last decade. The precondition for an effective solution to this issue is seen in the responsibility at the highest levels of government, political will, and cooperation

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Izveštaj o napretku Srbije za 2015. godinu, str 22; Izveštaj o napretku Srbije za 2016. godinu, p. 24; Izveštaj o napretku Srbije za 2018. godinu, p. 20-21. The reports are available at the official website of the Ministry of European Integration: <https://www.mei.gov.rs/srl/dokumenta/eu-dokumenta/godisnji-izvestaji-ek>;

⁹⁸ Izveštaj o napretku Srbije za 2020. godinu, p. 71:

https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2020_SR.pdf;

⁹⁹ Ibid.

¹⁰⁰ Lica nestala usled sukoba na Kosovu i njegovih posledica – Pregled stanja, Međunarodna komisija za nestala lica, Priština 2017, str. 7, 15: <https://www.icmp.int/wp-content/uploads/2017/05/kosovo-stocktaking-report-2017-bcs-2.pdf>;

between the authorities in Belgrade and Priština. However, the authors point out that the cooperation proved to be short-lived and difficult to achieve, for several reasons.

“Direct cooperation between Priština and Belgrade authorities has been hampered by political issues that have nothing to do with the issue of the missing, or, conversely, as a result of posturing by authorities on all sides who have sought to use the issue for political ends,”¹⁰¹ the report states.

In addition, it is added that this process has been dominated by the international community, which “has pursued the issue as a humanitarian, technical concern, and has overlooked the need to build political, governance, and rule-of-law structures of accountability in Kosovo¹⁰²”. A case in point stated is the long-standing reserve power of the international community in Kosovo.

The Law on Missing Persons

This report also identified shortcomings in the implementation of the Law on Missing Persons, which have not been corrected to date.

1. According to the legal provisions, the search for a missing person is considered completed when the missing person is found or when the remains are identified. The Law provides for the adoption of a bylaw by the Government of Kosovo, at the proposal of the Ministry of Justice, which would define the procedure for terminating the search for a missing person. This act would provide answers to questions such as which institutions are responsible for different procedures related to the termination of the search, i.e., who officially performs legal identification, what is the role of the prosecutor and who informs the family when the case is closed. However, that act was not adopted even three years later.
2. In addition, it is stipulated that the deputy chairman of the Commission shall be a representative of the non-majority community. However, since 2011, when the deputy chairman from the non-majority community resigned, this position has been vacant.¹⁰³
3. Regarding the processing and treatment of personal data in the Central Register of Missing Persons, Article 15 of the Law on Missing Persons provides for the adoption of a rulebook establishing the procedure for use, registration, exclusion and exchange of

¹⁰¹ Ibid. p. 15;

¹⁰² Lica nestala usled sukoba na Kosovu i njegovih posledica – Pregled stanja, Međunarodna komisija za nestala lica, Priština 2017, p. 15: <https://www.icmp.int/wp-content/uploads/2017/05/kosovo-stocktaking-report-2017-bcs-2.pdf>;

¹⁰³ The report of the European Commission from 2018, as a positive step, states the appointment of the Deputy Chairman of the Commission, who comes from the non-majority communities, however, more information about that appointment is not available. Upon our request for access to information of public importance from 21 January 2021, in which, among other things, we requested information on the members of the Commission for Missing Persons, we received the answer that “the names of the members of the Commission will soon be published on the website, which is currently developed in cooperation with UNDP and the British Embassy”. Kosovo Report 2018, European Commission p. 46: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>;

data, their verification and management, in accordance with the Law on Information Protection and security rules, as well as with other legislation related to personal data protection. The Commission for Missing Persons has not adopted this rulebook yet.

Overlapping of mandates

However, a bigger problem is the overlapping of the mandate of the Government Commission for Missing Persons with the mandate of the Kosovo Institute of Forensic Medicine.

Article 15, paragraph 1.7 of the Law on Forensic Medicine stipulates that the Institute of Forensic Medicine will maintain “contact with the families of missing persons and cooperation with local and international institutions and organizations involved in the process of clarifying the fate of the missing.”

These provisions overlap with the provisions of the Law on Missing Persons, which in Article 8 stipulates that the Commission for Missing Persons is a governmental body that manages, monitors and coordinates activities with domestic and international institutions and other actors, in clarifying the fate of missing persons as a result of the armed conflict from 1998-1999.

Privileged treatment of family members of missing KLA members

It was also noted that the authorities in Kosovo have taken measures to ensure that the families of missing persons have access and benefits in accordance with the law, but that family members of missing KLA members receive privileged treatment over the families of missing civilians.

Central register

The Law on Missing Persons also provides for the establishment of the Central Register of Missing Persons. It is a database that contains data on missing persons collected from available sources to help discover the identity and locations of missing persons, as well as the circumstances of their disappearance. The responsibility for its establishment and maintenance lies with the Commission for Missing Persons of the Government of Kosovo.

ICMP’s report states that the Kosovo Commission for Missing Persons established this register in 2012 and that it is in the Ministry of Public Administration. This register contains data on active cases of missing persons, however, until 2017, the Kosovo Commission for Missing Persons included post-mortem data on 558 cases of identified

missing persons in the Central Register. Due to a lack of human resources, data on about 3,000 additional closed cases have not yet been included.

Family members of the missing or their legal representatives may, in accordance with the Law on Missing Persons, submit a request for access to data in the Central Register. However, to date, this register has not been available for search as a website.

In this report, ICMP stated that efforts are needed to ensure the completion of the Central Registry to cover all closed and recently opened cases, as well as to ensure that it is available online, and that the Kosovo authorities must provide technical capacity for data maintenance and management in the Central Register.

Unidentified remains

ICMP collected reference samples of families of the missing, representing 1,874 persons still listed as missing at the time of writing the report (2017), but none of these reference samples matched the 699 unique DNA profiles isolated from unidentified bodies from Kosovo conflict. The report states that this is one of the key issues that must be resolved in order for the process to move forward.

It is assumed that misidentifications that occurred between 1999 and 2002, before the introduction of DNA analysis as the primary means of identifying human remains, are a significant factor in not solving the issue of these remains. About 2,000 cases of missing persons were resolved in this period by the method of probable identification, including visual recognition.

In 2010, ICMP made a DNA analysis of 77 cases from the Mitrovica area, which were previously concluded based on classical identification methods. The results showed that 13 of the 77 identifications were incorrect. Given that about 2,000 cases have been concluded based on classical identification methods, the number of incorrect identifications could be at least 340 cases. What further complicates this problem is that there are still about 300 unidentified remains in the Priština morgue, while the ICMP database contains 699 unique profiles from post-mortem samples without an established match.

In 2010, EULEX forensic staff began examining these unidentified remains. The 2012 annual report found that there were 342 unidentified cases in the Priština morgue, 94 of which could be identified in the future while identification is not possible for the remaining 248.¹⁰⁴ The ICMP report states that the reason for previous misidentifications

¹⁰⁴ The review of unidentified cases in the morgue in Priština resulted in the submission of a large number of post-mortem profiles to the ICMP for DNA testing, so 45 cases of missing persons were resolved on the basis of DNA analysis by the ICMP.

probably contributing to the current situation is that families who received misidentified bodies by classical methods probably did not provide blood samples for identification by DNA. Also, classical methods of misidentified bodies have not included DNA testing, and therefore there will be no matches with the families with which the missing person is related.

European Commission

The EC report for Kosovo 2020 states that resolving the fate of 1,664 missing persons linked to the conflict in Kosovo remains difficult due to a lack of new information on graves.

The process to resolve the fate of missing persons in the period from 2016 to 2019 was undermined by politicisation and inter-institutional disputes. The report for 2018 also points out that recurring attempts by some politicians to amend the timeframe covered by the Law on Missing Persons, effectively excluding many non-Albanian victims, are not acceptable.¹⁰⁵ However, it was noted that co-operation between the Kosovo Government's Commission for Missing Persons and the Institute of Forensic Medicine has improved.¹⁰⁶

The 2020 report noted that inter-institutional cooperation in Kosovo improved in the last two years, but that a more streamlined organisation would assist Kosovo speaking with one voice on the issue of the missing persons, both in national and regional discussions.¹⁰⁷

The file holder at the Prime Minister Office¹⁰⁸, the director of the Kosovo Commission for Missing Persons and the Kosovo representative to the Belgrade-Priština Working Group should be unified, according to the European Commission's report.

In 2019, two regional meetings of the ICMP were held, where efforts were made to develop a single list of missing persons.

It was also noted that since 2017, the Kosovo government has failed to make a step forward, including the adoption of the necessary legislation, in establishing the Central Register of Missing Persons and concluding 62 cases of missing persons.

¹⁰⁵ Kosovo report 2018, European Commission: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>;

¹⁰⁶ Kosovo report 2019, European Commission: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>;

¹⁰⁷ Kosovo report 2020, European Commission: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf;

¹⁰⁸ This function was established in 2018 by the then Prime Minister of Kosovo, Ramush Haradinaj, however, there is no information available on whether this function still exists and who is the person who performs this function.

As for the Institute of Forensic Medicine, EC reports over the past four years emphasize that the Institute still does not meet the necessary standards for sustainable forensic practice, including forensic anthropology and archaeology. It is emphasized that more needs to be done to build such capacity and ensure a continuous and sustainable funding of the Institute. The work on creating a functional case management system, started in the previous two years, has not yet led to its establishment. The Institute of Forensic Medicine and the Minister of Justice, after long delays, adopted the secondary legislation needed for the restructuring of the Institute in July 2020. The latest report for 2020 states that “some” progress has been made in building the Institute of Forensic Medicine’s capacity in forensic anthropology.¹⁰⁹

The reports also state that there has been no progress in resolving the issue of unidentified bodies in the Priština morgue, and that all forensic possibilities for their identification have been exhausted.

¹⁰⁹ Kosovo report 2020, European Commission: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/kosovo_report_2020.pdf;

RECOMMENDATIONS

Based on the analysis of mechanisms for resolving the issue of missing persons (legislative solutions, collecting data on missing persons - archives, establishing facts about missing persons through war crimes trials, exhumations of graves) available to the institutions of Serbia and Kosovo in the period from 1 January 2016 to 31 December 2020, we propose the following:

1. That the Governments of Serbia and Kosovo, with the mediation of the EU, through an agreement, determine the cooperation of all institutions in terms of resolving the issue of missing persons from the Kosovo conflict. Such an agreement must have control mechanisms, which will be provided by the EU as a facilitator, as well as periodic reports on implementation.
2. It is necessary to open all domestic and international archives that include material that could contribute to and help resolve the fate of missing persons.
3. Establishing the facts about the fate of missing persons should be one of the priorities in the detection and prosecution of war crimes before the judiciary in Serbia and Kosovo.
4. It is necessary to adopt and implement the law on missing persons in Serbia with the widest possible consultation with victims' associations and civil society, but also to improve other legislative solutions that will improve the general status of civilian victims of war and families of missing persons in Kosovo.
5. It is necessary for the Governments of Serbia and Kosovo to initiate changes in the Criminal Code, as well as in the laws on missing persons, so that enforced disappearance becomes a separate crime in accordance with the UN Convention for the Protection of All Persons from Enforced Disappearance, in order to speed up the finding of missing persons and process those who hide information.
6. It is necessary to harmonize the Kosovo legislative framework on missing persons, i.e., adopt bylaws that would regulate in more detail certain issues stipulated by the Law on Missing Persons, as well as clearly define the competencies of institutions dealing with this issue in order to avoid overlapping mandates.
7. Transparency of the work of the Commission for Missing Persons of the Government of Kosovo is needed - development of a functional official webpage where information on the members of the commission, work reports and other relevant data related to clarifying the fate of the missing in Kosovo would be available.
8. In addition to the archives of the police, army, and security services, in Serbia, it is necessary to investigate the archives available to utility companies,

- cemeteries, health centres and public services that may have participated in the transfer and burial of the remains.
9. It is necessary for the Commissions for Missing Persons of Serbia and Kosovo to include in their annual reports the data they have requested and received from domestic, as well as international organizations and institutions. In order to discover the archives, more coordination and organization of consultative meetings is needed with associations of families of the missing, as well as with domestic and foreign institutions.
 10. Instead of forcing them to declare their missing dead, families in Serbia and Kosovo should be given a “certificate of absence”, which would enable regulation of the situation regarding social benefits, property, family, and other rights.

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