



HUMANITARIAN LAW CENTER

Policy Paper:

Accounting for Missing Persons
from the Armed Conflicts of the 1990s
in the Former Yugoslavia



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Abstract

The wars of the 1990s in the former Yugoslavia have left dire long-term humanitarian, social and material consequences for the successor states of the former Yugoslavia. Of the approximately 130,000 people who lost their lives, more than 10,000 remain unaccounted for. Such a high number of missing persons testifies to the states' failure to uphold and protect basic human rights, to make the search for missing persons more effective and to establish the rule of law. Therefore, the states must make additional efforts to have their relevant institutions, including prosecutor's offices, courts and the police, effectively investigate the circumstances surrounding each disappearance. Bearing in mind that the search for missing persons in Serbia continues to face serious challenges, a more coherent strategic approach and an effective implementation of all available mechanisms that can make this process more efficient are critically important.

Introduction

The wars fought in the former Yugoslavia during the 1990s have left dire long-term consequences that the successor states of the former Yugoslavia will have to deal with for years to come. These states have yet to meet the challenge of dealing with systematic violations of human rights and building democratic institutions, tasks that cannot be accomplished without taking a responsible approach towards dealing with their violent past. Such an approach is impossible without establishing the fate of the persons who are still unaccounted for as a result of past armed conflicts.

The countries of the region still owe it to the families of 10,315 missing persons¹ to conduct a thorough and impartial investigation into the circumstances surrounding the killing or disappearance of their loved ones, and to punish those found responsible in a manner proportionate to the gravity of their crimes.² Serbia's legislative framework does not recognise the families of missing persons as civilian victims of war, as a result of which the domestic reparation system is flawed and discriminatory.³

In view of the fact that Serbia participated in four armed conflicts occurring in the 1990s, and given the judicially established facts about the role of Serbian institutions in the concealment of the bodies of victims of crimes⁴, a proactive approach by Serbian institutions is crucial to clarifying the fate of persons still unaccounted for.⁵ Victims' communities have high expectations of Serbian institutions, expectations proportional to the participation in the wars of armed forces directly or indirectly controlled by Serbia.⁶

The search for missing persons is a difficult process which is dependent on the political situation in a given state in the region. Although there is a need to know the truth regarding the fate and whereabouts of persons gone missing during the armed conflicts, a need expressed primarily by

1 International Committee of the Red Cross figures, 13 June 2018, HLCIndexIn: 25-F134245. According to the figures of the International Committee of the Red Cross, in May 2018 6,614 persons were still registered as missing in BiH, 2,051 in Croatia, and 1,650 in Kosovo.

2 See: *Dossier: The cover-up of evidence of crimes during the war in Kosovo: The concealment of bodies operation*, HLC, 2017, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/01/Dosije_OPERACIJA_SKRIVANJA_TELA_eng.pdf, last accessed: 21 May 2018.

3 See: *The initiative for assessing the constitutionality of the Law on the Rights of Civilian Invalids of War dismissed: The Constitutional Court does not recognize discrimination against civilian victims of war*, press release, HLC, 2017, available at: <http://www.hlc-rdc.org/?p=33565&lang=de>, last accessed: 18 May 2018.

4 See: *Dossier: The cover-up of evidence of crimes during the war in Kosovo: The concealment of bodies operation*, HLC, 2017, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/01/Dosije_OPERACIJA_SKRIVANJA_TELA_eng.pdf, last accessed : 21 May 2018.

5 *Transitional Justice in the process of Serbia's accession to the European Union*, HLC, 2014, p. 14, available at: <http://www.hlc-rdc.org/wp-content/uploads/2014/06/POLICY-PAPER-eng-ff.pdf>, last accessed: 03 May 2018.

6 *Transitional Justice in Serbia from 2013 to 2015*, HLC, 2016, p. 5, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf, last accessed: 21 May 2018.

their family members and sporadically included on the meeting agendas of statesmen in the region, in reality, the search process is hampered by many factors, such as the insufficient capacities and inadequate financial resources of the government bodies involved in tracing missing persons, the absence of political will and of a determination to enhance regional cooperation in order to make the search process more efficient and effective.

This paper provides an overview of the results achieved so far in addressing the missing person issue, identifies the challenges in the search for persons disappeared during the armed conflicts in the former Yugoslavia of the 1990s, and proposes a set of recommendations which may help make the search process more efficient.

The Search for Missing Persons in the Context of Dealing with the Past – the Right to Truth

One of the most severe consequences of the past armed conflicts is the large number of people whose fate is unknown and who are still being searched for. The circumstances of their disappearance may be very diverse. They may have been arrested, abducted or killed, and their bodies have not yet been found. At the time of disappearance, there may have been civilians or members of the armed forces. The term “missing persons” also includes persons who died anonymously and whose identity was not recorded, refugees and internally displaced persons without means of communication, and children who were separated from their families while fleeing war-affected areas.⁷

In the context of this paper, the term “missing persons” will refer to the persons who went missing during the 1990s armed conflicts in the territory of the former Yugoslavia.

Bearing in mind that for every missing person, there is a family living in uncertainty, the humanitarian dimension of clarifying the fate of missing persons should not be neglected.⁸ Currently, thousands of families of missing persons in the region are still searching for any information about what happened to their family members and where their mortal remains are located.⁹ Living in uncertainty involves a

⁷ *The Missing and Transitional Justice: The Right to Know and the Fight Against Impunity*, in: International Review of the Red Cross, ICRC, 2006, pp. 355-356, available at: <https://www.icrc.org/en/international-review/article/missing-and-transitional-justice-right-know-and-fight-against-impunity>, last accessed: 21 May 2018.

⁸ *Missing Migrants and their Families – the ICRC Recommendations to Policy Makers*, ICRC, 2017, p. 4, available at: https://www.icrc.org/sites/default/files/document/file_list/missing-migrants-families.pdf, last accessed: 21 May 2018.

⁹ At a session of the U.N. Committee on Enforced Disappearances on 5 February 2015, information on 789 families of the missing was presented. See: U.N. Committee on Enforced Disappearances, *Committee on Enforced Disappearances examines report of Serbia*, 5 February 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15547&LangID=E>, last accessed 16 April 2018.

series of psychological, economic, social and legal problems which are often inadequately recognised or addressed by the responsible institutions.¹⁰

Addressing the issue of missing persons would not only benefit their families. It would benefit society as a whole, because the search for missing persons is a multidimensional process which requires a society at large to assess its legacy of a violent past, in order to move towards peace, a stable democracy and the rule of law.¹¹ As part of this process, the states owe the families of missing persons the truth regarding the disappearances of their loved ones.

During armed conflicts and transitional periods, parties to the conflicts tend to manipulate the information they possess, and to exploit, for political gains, the issue of missing persons. Information about the missing is often withheld or manipulated to exert pressure on the other side or to prevent disclosure of information about the crimes which gave rise to disappearances.¹² All this makes the search for missing persons a complex legal and political issue which stands in the way of the normalisation of relations between the countries that emerged following the breakup of the SFRY.¹³

The signatories of the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflicts and Human Rights Abuses, which was drafted under the auspices of the International Commission on Missing Persons, committed themselves to addressing the issue of missing persons as a primary responsibility of states to secure a lasting peace and promote cooperation and reconciliation.¹⁴ The Declaration affirms the right of families of the missing to know the fate of their missing loved ones and calls on the governments to work together and exchange information that can help locate and identify the missing.¹⁵

In the context of the right to know the truth regarding the missing, the United Nations Human Right Council stresses that the international community must recognize the right of victims of gross violations of human rights, their families and society as a whole, to know the truth regarding such violations, to

10 *The Missing and Transitional Justice: The Right to Know and the Fight against Impunity* in: International Review of the Red Cross, ICRC, 2006, p. 356.

11 See the official website of the Missing Person Commission of the Government of the Republic of Serbia: <http://www.kznl.gov.rs/komisija-za-nestala-lica.php>, last accessed: 22 May 2018.

12 *The Missing and Transitional Justice: The Right to Know and the Fight against Impunity*, in: International Review of the Red Cross, MKCK, 2006, p. 356.

13 *Missing Persons and Models of Regional Cooperation*, UNDP, Belgrade, 2007, p. 13, available at: http://www.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_Missing_Persons_and_Models_of_Regional_Cooperation_-_Policy_Paper_03.pdf; *Croatia Threatens Serbia's EU Path Over Wartime Missing*, BalkanInsight, 1 September 2014, available at: <http://www.balkaninsight.com/en/article/croatia-threatens-serbia-s-eu-path-over-wartime-missing>. All sources last accessed: 21 May 2018.

14 *Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses*, Mostar, BiH, 28 August 2014.

15 *Ibid.*

the fullest extent practicable.¹⁶ The set of principles for the protection and promotion of human rights through action to combat impunity also stress the inalienable right to know the truth regarding gross violations of human rights.¹⁷

The European Court of Human Rights has taken the view that the failure of the state authorities to carry out effective investigation into the fate of the missing not only constitutes a continuing violation of the state's obligation to protect everyone's right to life under Article 2 of the European Convention on Human Rights, but also amounts to a violation of the prohibition of torture¹⁸ under Article 3 of the European Convention on Human Rights.¹⁹ An effective investigation, according to the case-law on the European Court, is an investigation that is official, transparent, independent and impartial, and capable of determining the facts in each individual case.²⁰ These standards cannot be met without the participation of judicial institutions, above all criminal courts and prosecutor's offices.²¹

The right of victims to know the truth is enshrined also in the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly in 2006.²²

The Normative Framework and Institutions Entrusted with Accounting for the Missing

Normative framework

Serbia does not have a normative framework which would, in an appropriate and comprehensive way, improve the process of searching for missing persons. In other words, Serbia has not passed a law which would specifically regulate the search process or the rights of missing person's families.²³

16 United Nations Human Rights Council, Resolution 9/11. Right to the truth (A/HRC/RES/9/11), 24 September 2008, available at: http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_9_11.pdf, last accessed: 11 June 2018.

17 *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), 8 February 2005, available at: <https://undocs.org/E/CN.4/2005/102/Add.1>, last accessed: 9 June 2018.

18 *Cyprus v. Turkey* (Application 25781/94), European Court of Human Rights judgment, 10 May 2001, para. 136, available at: <http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/CYPRUS%20v.%20TURKEY%20%282001%29.pdf>, last accessed: 7 June 2018.

19 *Kurt v. Turkey* (Application 15/1997/799/1002), European Court of Human Rights judgment, 25 May 1998, para. 134, available at: <https://www.legal-tools.org/doc/4fbf92/pdf/>, last accessed: 7 June 2018.

20 *Cyprus v. Turkey* (Application 25781/94), *Kurt v. Turkey* (Application 15/1997/799/1002).

21 *Ibid.*

22 *International Convention on the Protection of All Persons from Enforced Disappearance*, Preamble (Official Gazette of the Republic of Serbia – International Treaties, no. 1/11).

23 *Transitional Justice in Serbia from 2013 to 2015*, HLC, 2016, p. 63, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf, last accessed: 21 May 2018.

However, the absence of such a law should not prevent Serbia from being actively and effectively engaged in the search for missing persons, and should not be used as an excuse for not being active enough in addressing this issue.

There are several provisions of international humanitarian law which guarantee to families of missing persons the right to know what happened to their family members who went missing, and impose on the parties to the conflict the obligation to provide the families with the information they have on missing persons.

Serbia's obligation to investigate the circumstances under which people went missing stems from a number of international documents that Serbia has ratified over the past few decades, or to which it has become a state party as the successor state of the SFRY.²⁴ One such document is the 1949 Fourth Geneva Convention (The Geneva Convention relative to the Protection of Civilian Persons in Time of War), which requires parties to conflicts to facilitate enquiries made about persons who went missing as a result of hostilities.²⁵ The 1977 Additional Protocol I to the Geneva Conventions requires each party to a conflict to "search for the persons who have been reported missing by an adverse party".²⁶

According to a study on customary international humanitarian law conducted by the International Committee of the Red Cross, each party to a conflict must take all feasible measures to account for persons reported missing as a result of the armed conflict and must provide their family members with any information it has on their fate.²⁷

The rights of missing persons and their families, including the right to liberty and security of person, the right to personal dignity, the right to life, the right to family life, the right to be protected from violence, torture, inhumane or degrading treatment and punishment, are guaranteed by the European Convention

24 *Missing Persons and Models of Regional Cooperation*, UNDP, Belgrade, 2007, p. 23, available at: http://www.undp.org/content/dam/serbia/Publications%20and%20reports/English/UNDP_SRB_Missing_Persons_and_Models_of_Regional_Cooperation_-_Policy_Paper_03.pdf, last accessed: 21 May 2018.

25 *The Geneva Convention relative to the Protection of Civilian Persons in Time of War (The Fourth Geneva Convention)*, (Official Journal of the Federal People's Republic of Yugoslavia no. 24/50). Articles 123-140 of The Fourth Geneva Convention provide for the setting up of an Information Bureau and Central Agency responsible for receiving and transmitting information in respect of the protected persons who are in the power of the parties to the conflict. The Convention is available at: http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf, last accessed 21 May 2018.

26 *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Protocol I, Articles 32-34.), (Official Journal of the SFRY – International Treaties, no. 16/78). Articles 32-34 of the Additional Protocol I set forth the obligation for each party to a conflict to search for the persons who have been reported missing by an adverse party, and to transmit all relevant information concerning such persons to the adverse party in order to facilitate the tracing of these persons. They also regulate the gathering and recording of information on persons who have died as a result of hostilities or occupation. The Additional Protocol is available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470>, last accessed: 21 May 2018.

27 As cited in: *Izvori međunarodnog humanitarnog prava* [Sources of International Humanitarian Law], Belgrade, 2007, FPN, ICRC, Knežević-Predić Vesna, Avram Saša, Ležaja Željko, p. 296, Rule 117.

on Human Rights and Fundamental Freedoms²⁸, International Covenant on Civil and Political Rights²⁹, and International Convention for the Protection of All Persons from Enforced Disappearance^{30, 31}

In Serbia, the families of missing persons have access to some rights, under the Law on the Right of Civilian Victims of War³² and the Law on the Basic Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and Family Members of Fallen Combatants.³³ The Law on the Rights of Civilian Victims of War stipulates the following rights and entitlements for civilian victims of war: disability compensation, allowance for care and assistance provided by a caregiver, orthopaedic aid allowance, free healthcare or reimbursement of healthcare-related expenses, free or subsidised local travel, meal and lodging allowances during travels and stays away from home at the invitation of a competent authority, a monthly cash benefit and reimbursement of funeral expenses.³⁴

The regulations laying down the rights and entitlements of veterans, disabled veterans and their families are much more elaborate and comprehensive than the regulations laying down the rights of civilians left disabled by war (Law on the Rights of Civilians Disabled by War). They also provide for more extensive social protection services for the first group, thus giving them a more privileged status with respect to civilian victims of war.³⁵ Unlike the family members of civilian victims of war, the family members of fallen combatants who are entitled to survivor's disability benefit include the brothers,

28 *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Official Gazette of the SaM – International Treaties, nos. 9/03, 5/05 and 7/05 – correction, and Official Gazette of the RS – International Treaties, no. 12/10). The Convention is available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf, last accessed 21 May 2018.

29 Law Ratifying the International Covenant on Civil and Political Rights (Official Gazette of the SFRY no. 7/71), available at: <http://www.ljudskaprava.gov.rs/sh/node/19968>, last accessed 21 May 2018.

30 *International Convention for the Protection of All Persons from Enforced Disappearance* (Official Gazette of the Republic of Serbia, International Treaties, no. 1/2011). The Convention is available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-16&chapter=4&lang=en, last accessed: 21 May 2018. The legal framework governing the resolution of missing persons cases includes also the Agreement signed between the Federal Republic of Yugoslavia and the International Committee of the Red Cross on 14 June 1994 in Belgrade, and the Agreement on Cooperation in the Search for Missing Persons signed between the International Commission on Missing Persons and the Commission on Humanitarian Issues and Missing Persons of the Federal Government Republic of Yugoslavia on 5 April 2003 in Belgrade, which regulates cooperation between the two Commissions in the exhumation and identification of mortal remains through DNA analysis.

31 *Burying the Past – 10 Years of Impunity for Enforced Disappearances and Abductions in Kosovo*, special report EUR 70/07/2009, Amnesty International, London, 2009, available at: www.amnesty.org, last accessed: 11 April 2018.

32 Law on Civilian Victims of War (Official Gazette of the Republic of Serbia no. 52/96), Article 3.

33 Law on the Basic Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and Family Members of Fallen Combatants (Official Gazette of the FRY nos. 24/98, 29/98 - corr. and 25/2000 – Decision of the CCS and Official Gazette of the Republic of Serbia no. 101/2005 – other law and 111/2009 – other law), Articles 13 and 22.

34 Law on the Rights of Civilians Disabled by the War (Official Gazette of the Republic of Serbia no. 52/96), Article 4.

35 See: *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, HLC, 2017, p. 14, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, last accessed: 20 June 2018.

sisters, stepfather, stepmother or adoptive parents of a fallen combatant, and even the grandfather and grandmother if a fallen combatant has not been survived by closer relatives.³⁶

Here, it should be stressed that family members of missing civilians, contrary to the relevant international conventions,³⁷ are required to have declared their missing family member's dead³⁸ in order to qualify for the rights provided for under the above-mentioned laws. This requirement is incompatible also with the pertinent standards of the European Court of Human Rights, which treats the families of victims of enforced disappearance as victims of inhumane treatment prohibited under the European Convention on Human Rights.³⁹ Also, for many families, this requirement is extremely traumatic; they therefore avoid declaring their missing relatives dead until their mortal remains are located and the circumstances of their disappearance are established.

Although the above-mentioned legislation, taken as a whole, sets forth the obligation for Serbia to take resolute action to locate missing persons, **the adoption and implementation of a missing person act would significantly improve the normative framework regulating the search for missing persons.** Such an act would have the potential to regulate, in a systemic fashion, the responsibilities of state authorities, the communication and exchange of information between them, and also the provision of reparations to the families of missing persons. The adoption of such an act has also been recommended

36 Law on the Basic Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and Family Members of Fallen Combatants (Official Gazette of the FRY, nos. 24/98, 29/98 – corr. and 25/00 – CCS Decision, and SJS and Official Gazette of the RS no. 101/05 – other law, and 111/09 – other law), Articles 32 and 33. See in: *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, HLC, 2017, p. 14.

37 Law Ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Official Gazette of the Republic of Serbia - International Treaties, no. 1/2011), Article 24, paragraph 6; *Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention, adopted at the 135th meeting on 12 February 2015*, paras. 25–26 and 29; see in: *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, HLC, 2017, p. 12.

38 *Ibid.* Article 3, paragraph 2 of the Law on the Rights of Civilians Disabled by the War defines "a family member of a civilian victim of war" as a family member of a person who died in the circumstances set out in Article 2 of this Law. This definition does not include persons whose deaths have not been confirmed. Because of this, family members of missing persons do not have access to the monthly cash benefit provided for in the law for as long as they do not have their missing family member declared dead through a non-adversarial procedure.

39 See: *Kurt v. Turkey* (Application 15/1997/799/1002), judgment of the European Court of Human Rights, 25 May 1998, para. 134; *Cyprus v. Turkey* (Application 25781/94), judgment of the European Court of Human Rights, 10 May 2001, para. 157.

by the relevant international bodies⁴⁰ and organisations⁴¹, and associations of the families of missing persons also.⁴²

Institutions of the Republic of Serbia Responsible for Searching for Missing Persons

The Commission on Missing Persons of the Government of the Republic of Serbia

The Commission on Missing Persons, which the Government of the Republic of Serbia set up in 2006 (hereinafter: the Commission),⁴³ is the primary Serbian institution responsible for searching for missing persons. It is an inter-sectoral body made up of representatives of ten ministries and a president, who chairs the Commission.⁴⁴ Its main task is resolving cases of persons who went missing during the conflicts in Bosnia and Herzegovina, Croatia and Kosovo, who at the time of disappearance were citizens of Serbia or whose families have permanent residence in Serbia.⁴⁵

40 The U.N. Committee on Enforced Disappearances, *Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention (2015)*, para. 30.

41 Serbia: *Submission to the Committee on Enforced Disappearances*, Amnesty International, 20 January 2015, available at: <https://www.amnesty.org/en/documents/EUR70/001/2015/en/>, last accessed 20 June 2018.

42 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, pp. 54-56, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf; *Transitional Justice in Serbia (2013-2015)*, HLC, 2016, pp. 63-64.

43 Decision establishing the Commission (Official Gazette of the Republic of Serbia, nos. 49/2006, 73/2006, 116/2006, 53/2010 and 108/2012). Before the Commission was established, the issue of missing, captured or killed persons was the responsibility of the Council of Ministers in charge of missing persons of the State Union of Serbia and Montenegro. See in: *Initial Report of the Republic of Serbia on the implementation of International Convention for the Protection of All Persons from Enforced Disappearances (2013)*, p. 12, item 19, available at: <http://ljudskaprava.gov.rs/sr/node/162>, last accessed: 4 May 2018.

44 As stipulated in the decision establishing the Commission, the members of the Commission include representatives of the following state bodies: Ministry of Foreign Affairs, Ministry of Defence, Ministry of the Interior, Ministry of Justice, Ministry of Labour, Employment and Social and Veteran Policy, Ministry of Public Administration and Local Self-Government, Ministry of Finance, Office of the War Crimes Prosecutor, Office for Kosovo and Metohija, Commissariat for Refugees and Migration and Serbian Red Cross. See official website of the Commission on Missing Persons, section *Sastav Komisije [Composition of the Commission]*, available (in Serbian) at: <http://www.kznl.gov.rs/komisija-sastav-komisije.php>, last accessed: 8 June 2018.

45 See official website of the Commission on Missing Persons, section *Komisija za nestala lica [Commission on Missing Persons]*, available (in Serbian) at: <http://www.kznl.gov.rs/komisija-za-nestala-lica.php>, last accessed: 22 May 2018.

Its mandate is to “monitor, examine and make proposals for solving missing persons cases, as well as to gather and provide information on persons who were reported missing in connection with the armed conflicts in the territory of the former SFRY”.⁴⁶ The Commission also “participates in the fulfilment of the state’s commitments stemming from international treaties and agreements relating to resolving missing persons cases, and coordinates the work of competent bodies and organisations in the processes of searching for missing persons, exhumation and identification of bodies”.⁴⁷

The commission is government-funded. Its 2018 annual budget is RSD 33.500.000 (approximately equivalent to EUR 283.900).⁴⁸ Over recent years, exhumations have also been paid for from projects funded by several countries through their embassies in Serbia, namely the Embassy of the Swiss Confederation, the Embassy of the Kingdom of Norway, and the Embassy of the United Kingdom and the Embassy of Finland.⁴⁹

The Commission has been lacking in a proactive strategy for gathering information on clandestine gravesites that may contain the bodies of missing persons (a proactive strategy could include e.g. media campaigns, special telephone lines for people to report gravesite locations anonymously and the like). On the positive side, in December 2017, the “*Site Locator*” application was presented to the public in Serbia. The application was launched jointly by the Commission on Missing Persons and the International Commission on Missing Persons.⁵⁰ It is available both through the ICMP Inquiry Centre and on the official website of the Serbian Commission on Missing Persons following the “*ICMP Site Locator*” link⁵¹. This application allows for the reporting of mass graves and other sites where the mortal remains of persons missing as a result of the armed conflicts in the territory of former Yugoslavia may be located.⁵² The Commission on Missing Persons of the Serbian Government will be able to use

46 *Ibid.*

47 *Ibid.*

48 Serbia’s 2018 Budget Law (Official Gazette of the Republic of Serbia no. 113/2017), programme activity 0014. *Note:* At the time of this writing, RSD 33.500.000 is approximately equivalent to EUR 283.900, according to the official exchange rate of the National Bank of Serbia.

49 See: *Report No. 2 on the implementation of the National War Crimes Prosecution Strategy*, p. 51, available at the official Ministry of Justice website at: <https://mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, last accessed: 6 June 2018.

50 *Predstavljena aplikacija “Prijava lokacije” Međunarodne komisije za nestala lica* [ICMP’s Application “*Site Locator*” presented], press release, 6 December 2017, available (in Serbian) at the official website of the Commission on Missing Persons at: <http://www.kzn.gov.rs/arhiva.php>, last accessed: 11 June 2018.

51 Application “*Site Locator*” is available at the official website of the International Commission on Missing Persons at: https://oic.icmp.int/index.php?w=rep_grave&l=ba, and on the official website of the Serbian Commission on Missing Persons at: <http://www.kzn.gov.rs/index.php>. Both sources last accessed: 20 June 2018.

52 Application “*Site Locator*” is available at the official website of the International Commission on Missing Persons.

the information gathered through the application in tracking down suspected mass gravesites and clandestine graves.⁵³

The Missing Persons Division

The Missing Persons Division of the Commissariat for Refugees and Migration of the Government of the Republic of Serbia (hereinafter: the Division) provides administrative and technical assistance to the Commission on Missing Persons. Its responsibilities include: keeping an integrated record of persons reported missing as a result of past armed conflicts, keeping a record of exhumed, identified and non-identified mortal remains found in single and mass graves, collecting and processing data on missing persons and mortal remains, collecting information on single and mass graves sites for the purpose of record keeping, arranging for and coordinating the process of exhumation of mortal remains on the territory of Serbia, cooperating with the relevant competent authorities in other countries, especially in the search, exhumation and identification processes and in the recovery of mortal remains. The Division also maintains cooperation with associations of missing persons' families and relevant international organisations (ICRC, ICMP). It has a staff of four.⁵⁴

Such a small number of permanent employees illustrate the limited capacity of the only state body entrusted with the task of searching for missing persons. Given the scale and diversity of the tasks it has to perform, it is clear that the Division is seriously under-resourced.

In order for this institution to be able effectively to discharge its demanding duties, its capacity must be strengthened.

53 *Predstavljena aplikacija "Prijava lokacije" Međunarodne komisije za nestala lica* [ICMP's Application "Site Locator" presented], press release, 6 December 2017, available (in Serbian) at the official website of the Commission on Missing Persons at: <http://www.kznl.gov.rs/arhiva.php>, last accessed: 20 June 2018.

54 See the official website of the Commission on Missing Persons of the Government of the Republic of Serbia, section Professional Service- Missing Persons Division, available (in Serbian) at: <http://www.kznl.gov.rs/komisija-za-nestala-lica.php>, last accessed: 20 June 2018.

The Expert Group for Resolving the Cases of Persons Gone Missing on the Territory of Former SFRY

The Expert Group for resolving missing persons cases on the territory of the former SFRY was established in late 2017 by decision of the Commission on Missing Persons,⁵⁵ in order to enhance cooperation between the state authorities involved in war crimes investigation and prosecution with a view to accelerating the sharing of data relevant to clarifying the fate of missing persons.⁵⁶ Its main tasks include the collection, processing, exchange and analysis of data concerning locations, events and missing person's cases.⁵⁷

There is no information on any concrete achievements of the expert Group in the first six months of its operation, but given its composition, the Group is expected to ensure collaboration and the sharing of relevant information between all the authorities whose responsibilities include the search for missing persons.

The Working Group for the Collection of Facts and Evidence for the Investigation of Crimes Committed against Serbs and Members of other National Communities in Kosovo and Metohija

In November 2015, the Committee for Kosovo and Metohija of the National Assembly issued a decision setting up the Working Group for the collection of facts and evidence for the investigation of crimes committed against Serbs and members of other national communities in Kosovo and Metohija.⁵⁸

The Working Group, chaired by Milovan Drecun, comprises members of the Committee for Kosovo and Metohija of the National Assembly, the Office of the War Crimes Prosecutor, War Crimes Investigation

55 Decision no. 021-01-51/2017-01 of 25 December 2017, see: *Formirana Ekspertska grupa za rešavanje slučajeva nestalih lica na prostoru bivše SFRJ* [Expert Group established to solve cases of missing persons on the territory of the former SFRY], press release, 8 January 2018, official website of the Commission on Missing Persons, available (in Serbian) at: <http://www.kznl.gov.rs/aktuelno.php>, last accessed: 4 June 2018; *Report 1/2018 on the implementation of the Action Plan for Chapter 23*, Activity 1.4.1.8, p. 310.

56 *Formirana Ekspertska grupa za rešavanje slučajeva nestalih lica na prostoru bivše SFRJ* [Expert Group established to solve missing person's cases on the territory of the former SFRY], press release, 8 January 2018, official website of the Commission on Missing Persons, available (in Serbian) at: <http://www.kznl.gov.rs/aktuelno.php>, last accessed: 4 June 2018.

57 *Ibid.*

58 Report no. 1 on Implementation of the National Strategy for Prosecution of War Crimes, January 2018., p. 37; National Assembly of the Republic of Serbia, Committee on Kosovo and Metohija, Decision no. 02-2679/15 of 19 October 2015 establishing the Working Group.

Service, Commission on Missing Persons and the Judiciary, and Human Rights and Property Issues Group of the Office for Kosovo and Metohija.⁵⁹

Its task is intensively to collect facts and evidence that can help in the investigation of crimes against Serbs and other ethnic communities in Kosovo.⁶⁰ Despite the fact that almost three years have passed since it was established, it is not known whether any missing persons have been traced as a result of the Working Group's work.

Findings of International Bodies

The United Nations Committee on Enforced Disappearances

The findings and concluding remarks of the United Nations Committee on Enforced Disappearances are valuable pointers to the problems concerning the search for persons who went missing in the context of the armed conflicts in the territory of the former Yugoslavia.

At its session held on 4-5 February 2015, the U.N. Committee on Enforced Disappearances considered Serbia's Initial report on the application of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter: the Convention)⁶¹ to Serbia, after which it issued its concluding remarks, which include recommendations concerning the further action necessary to ensure the adequate application of the Convention.⁶²

The Committee recommends that Serbia ensure that all cases of enforced disappearance are investigated thoroughly and impartially without delay, and that those found responsible, including commanders and civilian superiors, are punished in accordance with the gravity of their crimes.⁶³ The Committee especially stressed the need to bring to justice all those responsible for the transportation of the bodies of Kosovo Albanians to clandestine locations in Serbia.⁶⁴ Furthermore, the Committee stresses Serbia's

59 See section: "Cooperation with State Institutions" on the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/co-operation/co-operation-with-state-institution>, last accessed: 20 June 2018.

60 *Ibid.*

61 *Initial Report of the Republic of Serbia about the application of the International Convention for the Protection of All Persons from Enforced Disappearances* is available at: <http://www.ljudskaprava.gov.rs/sr/node/162>, last accessed: 23 April 2018.

62 United Nations Committee of Enforced Disappearances, *Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention*, available at: <http://repository.un.org/handle/11176/138188>, last accessed: 23 April 2018.

63 *Ibid.*, para. 14.

64 *Ibid.*, para. 13.

obligation to uphold and protect the rights of relatives of missing persons, and recommends that Serbia adopt a comprehensive and gender-sensitive system of reparation, ensure that all persons who have suffered direct harm as a result of an enforced disappearance have access to medical and psychological rehabilitation.⁶⁵ Also, the Committee urges Serbia to provide for the rights of the families of missing persons in the Bill on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and their Family Members.⁶⁶

Considering the problems that hamper the progress in investigations, the Committee recommends Serbia to provide the Office of the War Crimes Prosecutor with adequate human, technical and financial resources, and to suspend all civil servants and military servicemen who are suspected of involvement in enforced disappearances.⁶⁷ The Committee calls on Serbia to conduct investigation into all allegations of intimidation and threats against witnesses of war crimes, and to strengthen the Witness Protection Unit with a view to guaranteeing the highest standard of protection for these witnesses.⁶⁸

Despite these recommendations, the capacity of the OWCP has not been strengthened since the Concluding Observations were issued,⁶⁹ and no individuals suspected of involvement in enforced disappearances are known to have been suspended from civilian or military service. The European Commission's report on the progress made by Serbia in 2018 notes that the protection of witnesses in war crimes trials has improved, but that the working conditions and capacity of the Witness Protection Unit have not, and that the legislative changes needed for a proactive change of witness identity policy have not been made.⁷⁰

65 *Ibid*, para. 26. (a), (b).

66 *Ibid*, para. 26. (b).

67 *Ibid*, para. 14.

68 *Committee on Enforced Disappearances: Serbia to prosecute individuals responsible for enforced disappearances and to protect rights of victims*, press release, HLC, 2015, available at: <http://www.hlc-rdc.org/?p=28309&lang=de>, last accessed: 23 April 2018.

69 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, pp. 20-24.

70 *Serbia 2018 Report*, p. 20. The report is available at the official web site of the Ministry for European Integration: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ec_progress_report_18.pdf, last accessed: 20 June 2018.

The Council of Europe Commissioner for Human Rights

In its report *Missing persons and victims of enforced disappearance in Europe* published in 2016, the Council of Europe Commissioner for Human Rights (hereinafter: the Commissioner) examined the problems hindering the search for missing persons in the territory of the former Yugoslavia.⁷¹ The Commissioner stresses that establishing the truth concerning past gross human rights violations and enforced disappearances and respect for and remembrance of the victims of these crimes are the keys to achieving a lasting peace and reconciliation.⁷²

The reports also states that the performance of national bodies responsible for resolving missing person cases is very much affected by the political pressure they often have to deal with, their inadequate capacities and lack of cooperation with CSOs. As regards the search for the missing and exhumations, the report concludes that the progress made in these areas has been slow and dependent on the degree of political support. It stresses that the search for missing persons, exhumations and identification of bodies can supply evidence for prosecution of enforced disappearances, but notes that there were cases where the discovery of a mass grave did not trigger criminal proceedings. The report further notes that opening official archives may prove crucial in tracing mass gravesites and missing persons.

The report includes recommendations concerning the process of clarifying the fate of missing persons. The governments in the region are urged to treat accounting for missing persons as a priority issue, encourage intergovernmental cooperation in that regard, make the information held in official archives and security and intelligence agencies' archives publicly available, and consider applying the principle of universal jurisdiction to cases of enforced disappearances, as it could contribute to the identification and punishment of perpetrators.⁷³ Acknowledging and addressing the specific situations of the families of missing persons are also recommended.⁷⁴

The report also recommends the countries to provide the families of missing persons and victims with the necessary legal, psychological and social assistance and prompt, fair and adequate reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.⁷⁵

71 *Missing persons and victims of enforced disappearance in Europe*, available at: <https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c>, last accessed: 23 April 2018.

72 *Ibid.*

73 *Ibid.*

74 *Ibid.*

75 *The Commissioner for Human Rights: Resolving the fate of missing persons should be priority for governments*, press release, HLC, 24 February 2017, available at: <http://www.hlc-rdc.org/?p=33406&lang=de>, last accessed 23 April 2018.

The European Commission's Report on Serbia's Progress

Over the past few years, the European Commission, in its reports assessing the progress made by Serbia towards meeting the political, economic and administrative criteria for accession to the European Union, has been looking at the difficulties in pursuing criminal accountability for war crimes committed during the armed conflicts in the former Yugoslavia, and also the issue of missing persons.⁷⁶

It has been noted in the reports that the unresolved fate of missing persons who disappeared in the conflicts of the 1990s remains a humanitarian concern. The lack of information on gravesites and difficulties in identifying the mortal remains exhumed up to now are considered by the European Commission, in its last three annual reports, to be the key obstacles to solving the remaining cases of missing persons.

Regional Cooperation

The cross-border nature of the armed conflicts in the former Yugoslavia requires close and intensive cooperation between the countries in the region in the search for missing persons. Such cooperation is absolutely necessary because past large-scale human rights abuses and dealing with their legacy is not a problem unique to a single society or a single country in the region. Regional cooperation in the process of searching for missing persons is essential because information on gravesites locations and the gravesites themselves are often scattered across various countries.

An effective regional cooperation should not only establish the procedures for mutual cooperation and communication but also result in the compiling of a consolidated regional list of missing persons which all countries in the region would agree upon. In view of the fact that the missing people numbers have been a matter of controversy,⁷⁷ **compiling a consolidated list which all bodies responsible for searching for missing persons in the region will agree upon is essential to improving regional cooperation.**

Serbia has signed a series of bilateral agreements with the countries of the former Yugoslavia, which regulate their mutual cooperation in accounting for missing persons. Also, Serbia is a signatory to the

⁷⁶ See: *Serbia 2015 Report*, p. 20; *Serbia 2016 Report*, p. 24; *Serbia 2018 Report*, pp. 21-22. Reports are available at the official web site of the Ministry for European Integration: <http://www.mei.gov.rs/eng/documents/eu-documents/annual-progress-reports-of-the-european-commission-for-serbia>, last accessed: 20 June 2018.

⁷⁷ *Srbija i Hrvatska: Kada će nestali biti konačno prebrojani* [Serbia and Croatia: When will the missing be finally counted?], Radio Free Europe, 17 February 2015, available (in Serbian) at: <https://www.slobodnaevropa.org/a/srbija-i-hrvatska-kada-ce-nestali-biti-konacno-prebrojani/26854294.html>; *Traženje nestalih: Strah od manipulacije* [Search for the missing: Fear of manipulation], Aljazeera Balkans, 1 April 2017, available (in BCS) at: <http://balkans.aljazeera.net/vijesti/trazenje-nestalih-strah-od-manipulacije>. Both sources last accessed: 20 June 2018.

*Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses.*⁷⁸ **The existing legal framework needs to be brought up to date and adapted to the current socio-political context, as some agreements and protocols on cooperation date back to 1995 or 1996.**⁷⁹ Until some new bilateral agreements are entered into, those already existing must be better implemented and complied with to avoid a stall in the search for missing persons.

The Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses

The Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses signed by Croatia, Serbia, BiH and Montenegro in August 2014 was an important step towards enhancing regional cooperation in the process of searching for missing persons.⁸⁰ The Declaration seeks to foster the process of tracing missing persons and defines the role of the states in the region in this process. The Declaration stresses “the primary responsibility of state authorities in addressing the issue of the missing”, and in particular the need to ensure that the mechanisms and methods employed conform to human rights standards and rule of law principles.

The Declaration emphasises the commitment to assist the judiciary in the prosecution of war crimes which caused persons to disappear, many of whom have not yet been found, and to foster international and regional judicial cooperation to that end.

Bearing in mind that effective and stable regional cooperation is fundamental to enhancing the search for missing persons, cooperation in this field has to be depoliticised. For a number of years, the search for missing persons has been affected by political developments, which has caused the

78 Bilateral agreements include: (with Croatia) an intergovernmental agreement signed in 1995 and the Protocol on cooperation in the search for missing persons signed in 1996; (with Bosnia and Herzegovina) Protocol on cooperation in the search for missing persons signed in 2015 in Sarajevo between the Government of the Republic of Serbia and the Council of Ministers of BiH; (with Montenegro) Protocol on cooperation signed in 2012. A list of documents that regulate regional cooperation in the process of searching for missing persons is available (in Serbian) at the official website of the Commission on Missing Persons of the Government of the Republic of Serbia: <http://www.kznl.gov.rs/dokumenta.php>, last accessed: 6 June 2018.

79 See, e.g.: the Agreement on Cooperation in the search for missing persons signed between the FRY and Croatia in 1995 and the Protocol signed in 1996, available (in Serbian) at the official website of the Commission on Missing Persons of the Government of the Republic of Serbia: <http://www.kznl.gov.rs/dokumenta.php>, last accessed: 21 June 2018.

80 *Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses*, Mostar, BiH, 28 August 2014.

search process to come to a standstill.⁸¹ In view of the fact that more than 25 years have passed since the outbreak of the armed conflicts in the Former Yugoslavia, the states in the region should not allow current political developments to affect the search for missing persons. Instead, they should treat the issue of missing persons primarily as a humanitarian issue.⁸² **The states in the region, including Serbia, should acknowledge in no uncertain terms that accounting for missing persons is not a matter of political will, but a right that belongs to the families of missing persons and also to other citizens.**⁸³

Mechanisms Concerning the Search for Missing Persons

Information gathering: state archives and war crimes trials

The Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings stipulates that all government authorities and organisations, upon the request of the War Crimes Prosecutor or War Crimes Investigation Unit, must “submit any document or other evidence in their possession, or communicate by other means the information that can help identify war crime offenders”.⁸⁴

The police and military archives, which contain valuable materials that can help establish the facts concerning the armed conflicts of the 1990s, for the most part are not open to the general public. The Ministry of Defence and the Ministry of Internal Affairs (MoI) often fail to comply with the provisions of

81 *Štrbac: Pronalazak nestalih i političke ocene ne idu zajedno* [Štrbac: Locating the missing and political assessments don't mix], N1 portal, 30 August 2017, available (in Serbian) at: <http://rs.n1info.com/a314476/Vesti/Vesti/Savo-Strbac-o-nestalima.html>; *Odalović napustio skup zbog rečenice da zlo dolazi iz Srbije* [Odalović leaves the meeting because of the sentence that evil comes from Serbia], N1 portal, 28 August 2017, available (in Serbian) at: <http://rs.n1info.com/a313864/Vesti/Vesti/Odalovic-napustio-skup-zbog-recenice-da-zlo-dolazi-iz-Srbije>; *Odalović: Broj nestalih se ne smanjuje* [Odalović: Missing persons numbers are not going down], N1 portal, 16.10.2017, available at: <http://rs.n1info.com/a335353/Vesti/Vesti/Odalovic-Broj-nestalih-se-ne-smanjuje.html>. All sources last accessed: 21 June 2018.

82 *Ibid. Families of victims: solving fate of missing person's humanitarian rather than political issue*, press release, HLC, 2018, available at: <http://www.hlc-rdc.org/?p=34794&lang=de>, last accessed: 21 June 2018.

83 *Bosnia and Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING*, ICMP, Sarajevo, 2014, p. 9, available at: https://www.icmp.int/wp-content/uploads/2014/12/StocktakingReport_ENG_web.pdf, last accessed: 21 June 2018.

84 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011- other law and 6/2015), Article 7, para. 4.

the Law on Free Access to Information of Public Importance⁸⁵, and often do not provide information and do not allow access to documents related to the armed conflict.⁸⁶

In most cases, protecting data secrecy is used as an excuse for denying access to requested documents. For the Ministry of the Interior, the usual explanation given is that the Ministry does not hold the information sought. The Ministry of Defence justifies refusal by reasoning that it is classified information or personal data.⁸⁷

In this regard, the general public do not know whether and to what extent the information held in these archives is being used in war crimes investigations, especially in those investigations that could result in the uncovering of mass gravesites.

It is the documents on the clearing-up of battlefields that can provide most valuable clues for the search for missing persons, because clearing-up operations in some cases were performed for one sole purpose – to cover up evidence.⁸⁸ Clearly, the military and police archives do contain documents on clearing-up operations, because it was on the basis of these documents that a MoI working group discovered the mass graves containing the bodies of Kosovo Albanians in Batajnica, Perućac and Petrovo Selo.⁸⁹

The documents held in the military and police archives contain information that can help in the search for persons who were forcibly disappeared during the conflicts.⁹⁰ They contain documented records of many military and police operations carried out during the conflicts, including “clearing-up of battlefield” operations, which involved taking measures aimed at finding and collecting or removing dead people and animals, and at removing all things hazardous to the health of humans and animals and harmful to the environment”.⁹¹ **Given all the above, the documents held in domestic and international archives which could contribute to and help the process of accounting for missing persons should be made publicly available.**

85 Law on Free Access to Information of Public Importance (Official Gazette of the Republic of Serbia, nos. 120/2004, 54/2007, 104/2009 and 36/2010), Article 2.

86 See: *Access to documents related to crimes against international law in the possession of Serbian institutions: State Secret Prevails over Right to the Truth*, HLC, 2016, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/04/Pristup_dokumentima_o_zlocinima_eng.pdf, last accessed: 16 April 2018.

87 *Ibid*, pp. 7-8.

88 For more information on the concealment of bodies see: ICTY Trial Chamber Judgment in *Šainović et al.* of 26 February 2009, pp. 428–460; ICTY Trial Chamber Judgment in *Dorđević* of 23 February 2011, pp. 474–520.

89 For more on the work of these investigative bodies, see: *Dossier: Rudnica*, HLC, 2015, pp. 13-15, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf, last accessed: 16 April 2018.

90 See: *Dossier: Rudnica*, HLC, 2015.

91 *Ibid*, p. 12.

Establishing the Fate of the Missing and the Domestic Prosecution of War Crimes

Disappearance of people during armed conflicts is largely a consequence of violations of international humanitarian law.⁹² Establishing the facts concerning the fate of disappeared persons should therefore be a priority in domestic war crimes investigation and prosecution.

The National War Crimes Prosecution Strategy (hereinafter: the National Strategy), adopted by the Government of Serbia in February 2016, states that “consistent implementation of comprehensive measures is necessary, with a view to ensuring that crimes are investigated and war crimes proceedings conducted lawfully, within a reasonable time, and with full respect for the rights of all those participating in the proceedings. This would enable adequate punishment of those responsible for war crimes, justice for victims, and location of the bodies of the missing.”⁹³ In this connection, “a reduced number of persons unaccounted for would be one of the indicators of successful National Strategy implementation, as set out in the National Strategy”.⁹⁴ In another strategy, which was adopted by the Office of the War Crimes Prosecutor in April 2018, this office made a commitment to make every effort “to discover the fate of persons who still remain missing, by intensifying its investigations in order to locate the gravesites where the mortal remains of those killed in the armed conflicts in the territory of the former Yugoslavia are buried.”⁹⁵

The commitment to giving priority to the clarification of the fate of missing persons in the prosecution of war crimes is also expressed in the *Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflicts and Human Rights Abuses*, to which Serbia is a signatory.⁹⁶

Despite the declared commitment to prosecuting those war crimes which can lead to the clarification of the fate of the missing, so far only one war crime trial has resulted in the discovery of a mass gravesite.⁹⁷

92 *The ICRC and the missing*, in: “International Review of the Red Cross”, Sassoli Marco, Tougas Maria-Louise, vol. 84, edition 848, p. 732.

93 *National Strategy for Prosecution of War Crimes*, p. 7, (Official Gazette of the Republic of Serbia, nos. 19/2016), available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF, last accessed: 16 April 2018.

94 *Ibid*, p. 10.

95 *The Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2018-2023*, p. 8. The Prosecutorial Strategy is available at the official website of the Office of the War Crimes Prosecutor: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2018-05/strategija_trz_eng.pdf, last accessed: 01 June 2018.

96 *Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses*, Article 7.

97 The *Sotin Case*, trial reports and documents available (in Serbian) at: <http://www.hlc-rdc.org/Transkripti/sotin.html>, last accessed 24 April 2018.

In order to make the search for missing persons more efficient, cooperation between all institutions in the Republic of Serbia responsible for the search must be stepped up and aimed at collecting information on sites where the bodies of missing persons may be located.

In that regard, war crimes trials are an unparalleled mechanism for clarifying the fate of missing persons. And war crimes prosecutions are the key to meeting the demands for thorough and impartial investigation of all cases of enforced disappearance committed in the context of past armed conflicts and the punishment of those found responsible.⁹⁸

Exhumation of mass graves – activities by competent state authorities

Thus far, the Commission on Missing Persons has not been proactive in the search for mass gravesites located on Serbian territory. As for war crimes trials, just one mass gravesite – that in Sotin (Croatia) – has been discovered as a result of war crimes proceedings (the *Sotin* Case).⁹⁹ It was on the basis of information disclosed by the accused Žarko Milošević during the investigation into the crimes committed in Sotin, and through cooperation between the Office of the War Crimes Prosecutor, the Office of the State Attorney of the Republic of Croatia, the Commission on Missing Persons of the Government of the Republic of Serbia and the Imprisoned and Missing Persons Division from Croatia, that the mortal remains of 13 persons killed in Sotin by members of Serbian forces on 27 December 1991 were found in a mass grave near Sotin in April 2013.¹⁰⁰

In spring 2001, three mass gravesites were uncovered in Serbia containing the bodies of 889 Kosovo Albanians.¹⁰¹ The first one to be discovered was that located at the police training centre in the Belgrade suburb of Batajnica.¹⁰² The second was found in Petrovo Selo, in Eastern Serbia, near the Serbian MoI counter-terrorist units' training grounds.¹⁰³ And the third was by Lake Perućac near Bajina Bašta, in Western Serbia.¹⁰⁴ There was another, fourth mass grave, which was discovered after the Commission on Missing Persons was established. It was located on the basis of information provided by a Kosovo Albanian over the course of investigation into the so-called *Drenica Group* (*Drenica Group* Case heard

98 Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention adopted at the 135th meeting on 12 February 2015, para. 14.

99 The *Sotin*, Case trial reports and documents available (in Serbian) at: <http://www.hlc-rdc.org/Transkripti/sotin.html>, last accessed 24 April 2018.

100 *Ibid.*

101 See: *Dossier: Rudnica*, HLC, 2015, p. 7.

102 See *Batajnica Memorial Initiative* at: <http://www.batajnicamemorialinitiative.org/en/grobnice>, last accessed: 26 April 2018.

103 See: *Dossier: The cover-up of evidence of crimes during the war in Kosovo: The Concealment of Bodies Operation*, HLC, 2017, Belgrade, pp. 45-47, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/01/Dosije_OPERACIJA_SKRIVANJA_TELA_eng.pdf, last accessed: 20 June 2018.

104 See: *Dossier: Rudnica*, HLC, 2015, p. 7.

by the District Court in Mitrovica).¹⁰⁵ After the competent institutions had searched a site located in the abandoned quarry of Rudnica near Raška on several occasions since 2007, the first mortal remains were recovered from this site in 2013.¹⁰⁶ The DNA identification showed that the bodies belonged to Kosovo Albanians killed during the 1999 conflict in Kosovo.¹⁰⁷ 53 victims were identified.¹⁰⁸

The locating of the mass grave in Rudnica was the result of the work of Kosovo institutions, which provided the information on its location to Serbian institutions. The role of the competent Serbian institutions was technical and consisted in pinpointing the micro-location of the mass grave and its excavation.¹⁰⁹ All these locations had been excavated by 2015. An additional four locations were searched in Serbia after Kosovo institutions marked them as suspected mass gravesites, namely Medveđa, Brežuljak-Rudnica, Novi Pazar and Kiževak.¹¹⁰ The searches have delivered no results so far. Their lack of engagement in the independent search for mass graves shows that the Commission on Missing Persons and other government bodies responsible for establishing the facts concerning past crimes have adopted a reactive and passive approach without taking the initiative to search for mass gravesites on their own.¹¹¹ The Humanitarian Law Center has no information on whether any locations suspected of being mass gravesites are being investigated at the time.

105 *Ibid*, p. 9.

106 *Ibid*, p. 9.

107 *Ibid*, p. 9.

108 Reply of the Commission on Missing Persons of the Government of the Republic of Serbia to the HLC's request for access to information of public importance 021-01-02/2016-26 of 4 May 2016.

109 Data are taken from: *Transitional Justice in Serbia (2013-2015)*, HLC, 2016, p. 66, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf, last accessed: 21 May 2018.

110 *Ibid*.

111 *Ibid*.

Conclusion

The nearly 20 years that have passed since the end of the armed conflicts in the former SFRY, in which Serbia participated, have been marked by the absence of a firm resolve to come to terms with the legacies of massive human rights violations committed in the recent past. However, the consequences of the wartime past, as well as the consequences of failure to deal with that past, are hard to ignore. The 10,315 persons still unaccounted for and thousands of families who are still waiting for answers regarding the fate of their loved ones simply do not permit the countries in the region not to deal with these grave legacies of the past. In this context, Serbia is expected to improve all mechanisms that can lead to missing persons being found.

Many times, inefficiency in the search for missing persons is explained by a lack of political will. But there are also other factors that hamper this process, such as the insufficient capacity of the institutions tasked with locating missing persons, the inaction of the prosecuting authorities when it comes to locating the missing and prosecuting those responsible for the disappearances, impeded and restricted access to the relevant official archives, etc. The present rate of resolving the fate of missing persons is not an adequate response to the humanitarian dimension of the problem, because as the years go by, the chances of finding missing persons are getting slimmer. Another major problem is lack of information. Therefore a holistic approach to the issue of missing persons is essential, as well as determination and making use of all available mechanisms.

Highlighted recommendations

1. The process of searching for missing persons should be depoliticised.
2. The implementation of and compliance with all intergovernmental agreements and protocols signed so far should be strengthened.
3. A single, consolidated regional list of all persons missing from the armed conflicts in the territory of the former Yugoslavia should be compiled.
4. Regional cooperation in the process of searching for missing persons should be enhanced.
5. All national and international archives which contain documents and information that can assist in accounting for missing persons should be opened.
6. Establishing the fate of missing persons should be made a priority in domestic war crimes investigation and prosecution.
7. Cooperation between all institutions of the Republic of Serbia tasked with searching for missing persons should be enhanced.
8. A missing person's act should be passed and properly implemented, and existing legal solutions should be improved in order to establish the better status of the families of missing persons.
9. The capacities of all institutions of the Republic of Serbia responsible for searching for missing persons should be strengthened.

Policy Paper:
Accounting for Missing Persons
from the Armed Conflicts of the 1990s in the Former Yugoslavia

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